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The Compensation for Victims of Wrongful Shooting through Pretrial and Alternative Solutions in Indonesia

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This study aims to analyze the mechanism for filing and providing compensation for victims of wrongful shootings in pretrial according to criminal procedure law in Indonesia and explore alternative solutions for victims who do not get the proper compensation.

The study method used is normative juridical, emphasizing a prescriptive nature because it solves society's legal problems. It is based on literature studies on primary legal materials such as laws, regulations, and court decisions and secondary legal materials such as journals and legal literature.

The novelty of the study lies in the discussion of compensation mechanisms for victims of wrongful shootings and alternative solutions that have not been the primary focus in previous studies. This study explored the effectiveness of pretrial procedures as a solution for victims of wrongful shootings by law enforcement officers, as well as analyzed existing legal mechanisms to identify and propose improvements to prevent similar incidents in the future.

The results show that victims of misfire can be compensated through the pretrial petition mechanism stipulated in KUHAP, Government Regulation No. 92/2015, and Ministry of Finance Decree No. 983/KMK.01/1983. However, the existing provisions still restrict the amount of compensation, which is often disproportionate to the victim's losses. Thus, alternative solutions that can be pursued include: (1) non-litigation settlement of cases through negotiation or mediation, (2) taking the criminal route by filing a lawsuit for deprivation of liberty and requesting compensation, and (3) filing a civil lawsuit based on unlawful acts (tort lawsuit).

This study concludes that the government needs to revise Government Regulation No. 92/2015 by removing the minimum and maximum compensation limits. The amount of compensation should be determined by the District Court Judge, considering the level of loss suffered by the victim. Thus, justice for victims of wrongful shootings can be realized more optimally.

Keywords : Alternative Solutions; Compensation; Criminal Procedure Law; Mistaken Shooting; Pretrial.

Abstrak

Penelitian ini bertujuan untuk menganalisis mekanisme pengajuan dan pemberian ganti kerugian bagi korban salah tembak dalam praperadilan menurut hukum acara pidana di Indonesia, serta menggali alternatif solusi bagi korban yang tidak mendapatkan ganti kerugian yang sesuai.

Metode penelitian yang digunakan adalah yuridis normatif dengan penekanan pada sifat preskriptif, karena merupakan solusi atau pemecahan terhadap permasalahan hukum yang

terjadi di masyarakat, kemudian berdasarkan studi kepustakaan terhadap bahan hukum primer seperti peraturan perundang-undangan, putusan pengadilan, dan bahan hukum sekunder seperti jurnal dan literatur hukum.

Kebaruan penelitian terletak pada pembahasan mekanisme ganti kerugian bagi korban salah tangkap dan alternatif penyelesaiannya yang belum menjadi fokus utama dalam penelitian sebelumnya. Penelitian ini akan mengeksplorasi efektivitas prosedur praperadilan sebagai solusi bagi korban salah tangkap oleh aparat penegak hukum, serta menganalisa mekanisme hukum yang ada untuk mengidentifikasi dan mengajukan usulan perbaikan untuk mencegah kejadian serupa di masa depan.

Hasil penelitian menunjukkan bahwa korban salah tangkap dapat diberikan ganti kerugian melalui mekanisme permohonan praperadilan sebagaimana diatur dalam KUHAP, Peraturan Pemerintah Nomor 92 Tahun 2015, dan Keputusan Menteri Keuangan Nomor 983/KMK.01/1983. Namun, ketentuan yang ada masih membatasi jumlah ganti rugi, sehingga seringkali tidak mencerminkan tingkat kerugian yang dialami korban. Oleh karena itu, alternatif penyelesaian yang dapat ditempuh antara lain: (1) penyelesaian kasus secara non-litigasi melalui negosiasi atau mediasi, (2) menempuh jalur pidana dengan mengajukan gugatan perampasan kemerdekaan dan permintaan ganti rugi, dan (3) mengajukan gugatan perdata atas dasar perbuatan melawan hukum (gugatan perbuatan melawan hukum).

Kesimpulan penelitian ini pemerintah perlu merevisi Peraturan Pemerintah Nomor 92 Tahun 2015 dengan menghapus batas minimal dan maksimal dalam pemberian ganti rugi. Penentuan besaran ganti rugi sebaiknya diserahkan kepada Hakim Pengadilan Negeri dengan mempertimbangkan tingkat kerugian yang diderita korban. Dengan demikian, keadilan bagi korban salah tangkap dapat diwujudkan dengan lebih optimal.

Kata Kunci: Alternatif Penyelesaian; Ganti Rugi; Hukum Acara Pidana; Penembakan Misterius; Praperadilan.

1. INTRODUCTION

When someone has committed an act categorized as a criminal offense (*strafbaar feit*), the National Police of the Republic of Indonesia (POLRI), which is authorized by the state through Article 1 Point 1 and 4 of Law Number 8 of 1981 concerning Criminal Procedure, can immediately follow up on the criminal offense, which in criminal procedural law is known as the investigation and inquiry. If the act (*feit*) can already be classified as a criminal offense, which has fulfilled the principle of legality in Article 1,¹ then the stage rises to the investigation stage. Where this is a determination of whether the act is categorized as a criminal offense or not, which is a process that should not be underestimated, considering the risk if the act turns out not to be a criminal offense and the stage has risen to the level of investigation or even prosecution, then, of course, it can harm many parties starting from the perpetrator, victim, and law enforcement officials concerned. Andi Hamzah, in his book, also said that the principle of legality prevents the authorities from committing arbitrary acts against people outside the law.²

The principle of legality in criminal law must include at least three fundamental elements.

¹ "Undang-Undang Nomor 1 Tahun 1946 Tentang Peraturan Tentang Hukum Pidana," Pub. L. No. 1 (1946).

² Andi Hamzah, *Hukum Pidana Indonesia* (Sinar Grafika, 2017).

First, *nulla poena sine lege* means that no one can be punished unless a specific legal provision prescribes such punishment. This ensures that criminal sanctions are not arbitrarily imposed but must be based on written law. Second, *nulla poena sine crimine* means that a person cannot be punished unless they have committed an act legally recognized as a criminal offense. This principle safeguards individuals from being penalized for actions that have not been explicitly defined as crimes. Third, *nullum crimen sine poena legali* emphasizes that an act cannot be classified as a criminal offense unless it is explicitly regulated and sanctioned by law. It reinforces the necessity of legal certainty in criminal law, preventing the application of punishment based on vague or retroactive legal interpretations.³

In the investigation stage, the usual step taken by the police or investigators to be able to find evidence of a criminal offense is to arrest a suspect who is strongly suspected of committing a criminal offense based on Article 17.⁴ In the arrest process, the suspect should not be arrested immediately. Investigators carrying out the arrest task must at least be armed with a letter of assignment to be shown to the suspect. In addition to being equipped with a letter of assignment, investigators must also be equipped with a warrant. In Article 18 Paragraph (1) of the Criminal Procedure Code, at least the warrant includes the suspect's identity, starting from the suspect's name, age, and residence. Then, the warrant must also contain the reason for the arrest, a brief description of the alleged crime, and the state where the suspect will be examined later. Then, it should not be forgotten that the warrant should be forwarded to the suspect's family or local officials after the arrest.

Arrest in normal circumstances occurs after a report or complaint is made, but investigators may also arrest a suspect caught red-handed, during or shortly after committing a crime. Article 1, Point 19 of the Criminal Procedure Code defines being caught red-handed as someone seen committing the act, identified by the public, or found with evidence linking them to the crime. This definition limits arrests to during or after the act, not before. However, in exceptional criminal cases such as terrorism, exceptions allow arrests based on strong suspicion that a person is about to commit a crime, as a preventive measure. Arrests made when a suspect is caught red-handed are exceptional, allowing investigators to act without a warrant due to urgent circumstances. This deviation is legally justified to support law enforcement duties. However, in practice, some investigators exceed legal boundaries, such as shooting suspects under the pretext of preventing escape or evidence destruction, even when not life-threatening. In such cases, regardless of the suspect's guilt, they are entitled to seek compensation through a pretrial process. Because, if the actions of the investigator that are not based on the law result in losses for the party being investigated, be it material or immaterial losses, they can apply for compensation.⁵ Criminal procedural law also recognizes

³ Muammar Muammar, "Penanganan Tindak Pidana Viral: Reduksi Terhadap Asas Legalitas Ke Asas Viralitas," *PATTIMURA Legal Journal* 2, no. 1 (2023): 19–29.

⁴ "Undang-Undang Nomor 8 Tahun 1981 Tentang Hukum Acara Pidana," Pub. L. No. 8 (1981).

⁵ VIVI HARIANI Damanik, "KEWENANGAN PRAPERADILAN MENGENAI GUGATAN PERMOHONAN GANTI KERUGIAN KARENA KEKELIRUAN MENGENAI ORANG DALAM PEMERIKSAAN PENYIDIKAN (STUDI PUTUSAN PRAPERADILAN NO. 145/PID. PRA/2017/PN. JAKSEL)," *Jurnal Mahupiki* 1, no. 8 (2019).

the principle of presumption of innocence, so that a person's human rights should be respected, one of which is realized through pretrial institutions following Article 77 of the Criminal Procedure Code.⁶

Article 95 of the Criminal Procedure Code (KUHP) broadens the rights of individuals, particularly suspects, to seek compensation and rehabilitation if they are subjected to unlawful legal actions. These rights apply in various circumstances, including wrongful arrest without a valid legal basis, unlawful detention that does not comply with legal procedures, baseless prosecution, trial proceedings that violate fundamental rights, or other legal actions that contravene the applicable laws and regulations. This provision ensures that suspects who suffer legal injustices have a formal mechanism to restore their rights and seek redress for the harm they have endured.

Article 77 of the Criminal Procedure Code, amended by Constitutional Court Decision No. 21/PUU-XII/2014, expands pretrial authority beyond reviewing arrests and detentions to include the legality of suspect designations, searches, and seizures. It enhances legal protection and judicial oversight. However, problems arise when investigators wrongfully shoot individuals who are not suspects. It raises questions about the effectiveness of legal protection and whether pretrial can offer a remedy. This study analyses the pretrial mechanism for compensation in wrongful shooting cases. It explores alternative solutions when compensation is not proportional to the victim's losses, an area not yet widely discussed in prior research. For example, a thesis written by Della Damayanti entitled "Implementation of Compensation for Victims of Wrongful Arrest (Error in Persona) in Criminal Cases (Case Study: Case Number 98/Pid.Pra/2016/PN JKT.Sel)" examines compensation in cases of mistaken arrest.⁷

In addition, there is a journal article by Prasetyo Margono entitled "Legal Protection for Victims of Wrongful Arrest in Criminal Acts According to the Criminal Procedure Code",^[2] as well as a study by Indah Dwi Miftachul Jannah entitled "Legal Sanctions for Wrongful Shooting by Police Officers (Legal Analysis of Decision No. 44/Pid.B/2009/PN.WMN)".⁸ Those three studies only focused on the pretrial motion for victims of mistaken arrest and mistaken shooting in the criminal realm, without explicitly discussing the compensation mechanism for mistaken shooting and alternative solutions. Therefore, the novelty aspect of this study lies in discussing the compensation mechanism for victims of mistaken shooting and alternative solutions, which have not been the primary focus in previous research. This study will explore the effectiveness of pretrial procedures as a solution for victims of wrongful shooting by law enforcement officers, as well as analyze existing legal mechanisms to identify and propose

⁶ I Made Wisnu Wijaya Kusuma and Ni Made Sukaryati Karma, "Upaya Hukum Praperadilan Dalam Sistem Peradilan Pidana Di Indonesia," *Jurnal Interpretasi Hukum* 1, no. 2 (2020): 73–77.

⁷ DELLA DAMAYANTI, "PELAKSANAAN PEMBERIAN GANTI KERUGIAN TERHADAP KORBAN SALAH TANGKAP (ERROR IN PERSONA) DALAM PERKARA PIDANA (Studi Kasus: Perkara Nomor 98/Pid. Pra/2016/PN JKT. Sel)" (Fakultas Syariah dan Hukum UIN Syarif Hidayatullah Jakarta, n.d.).

⁸ Indah Dwi Miftachul Jannah and A Djoko Sumaryanto, "Sanksi Hukum Tindakan Salah Tembak Aparat Kepolisian (Analisis Yuridis Putusan No. 44/PID. B/2009/PN. WMN)," *Judiciary (Jurnal Hukum Dan Keadilan)*, 2022.

improvements to prevent similar incidents in the future. It will be discussed in more detail later.

In law enforcement, compensation rulings often spark debate, as judges' decisions are frequently seen as too low and not reflective of actual losses. It raises concerns about the standards used and the need to optimize judicial discretion for substantive justice. A notable case occurred on January 29, 2006, when Briptu Nofrizal shot Iwan Mulyadi without proper procedure, causing permanent paralysis. The Supreme Court ordered Polri to pay IDR 300 million, while the victim's family sued for IDR 200.8 billion as institutional accountability. This case highlights the importance of state responsibility for unlawful actions by its officers.⁹

To highlight the urgency of this issue, the researcher presents data from several relevant cases in table format, illustrating inconsistencies or imbalances between actual losses and the compensation awarded by the courts. Furthermore, examples of cases where the awarded compensation is deemed inadequate economically and in terms of social justice will also be discussed.¹⁰

Table 1. Wrongful Shooting Cases in Indonesia

No.	Type of Incident	Date of Incident	Victim	Location	Brief Chronology
1	Wrongful Arrest & Torture	January 30, 2024	AAP	University campus in Limboto, Gorontalo	AAP was arrested by Gorontalo District Police and accused of involvement in a fight; he was tortured, resulting in a bruised left eye.
2	Wrongful Shooting	January 30, 2024	SM (STIE 66 Kendari student)	Baruga Gas Station, near Polda Sultra HQ	SM was shot in the shoulder as police pursued a drug dealer who had boarded SM's car.
3	Wrongful Shooting	February 11, 2024	FS (Minor)	Puuwatu District, Kendari	During a patrol targeting teens carrying machetes, a warning shot struck FS, who was resting at home.

Source: ¹¹

Several benchmarks will be presented to support the importance of judges' active role in determining fair compensation, including comparative studies from other countries. In the UK, the case of Jean Charles de Menezes, a Brazilian national mistakenly shot by London police on 22 July 2005, highlights state accountability. Though there is no pretrial process like in Indonesia, his family sued and received compensation. The case drew international attention

⁹ And Saputra, "MA Hukum Polri Bayar Rp 300 Juta Karena Anggotanya Salah Tembak Warga," detikNews, 2016.

¹⁰ S.H. Dimas Bagus Arya, "Pelanggaran HAM Terus Diulang: Rentetan Peristiwa Kekerasan Kepolisian Pada Awal 2024, Menyebabkan Warga Sipil Menjadi Korban," Badan Pekerja KontraS, 5803.

¹¹ Dimas Bagus Arya, "Pelanggaran HAM Terus Diulang: Rentetan Peristiwa Kekerasan Kepolisian Pada Awal 2024, Menyebabkan Warga Sipil Menjadi Korban," Badan Pekerja KontraS, 5803, <https://backup10juni.kontras.org/2024/02/19/pelanggaran-ham-terus-diulang-rentetan-peristiwa-kekerasan-kepolisian-pada-awal-2024-menyebabkan-warga-sipil-menjadi-korban/>.

and criticism, emphasizing the need for clear standards in law enforcement and fair compensation practices.¹²

Meanwhile, in Australia, the case of David Gundy is another example of the failure of the police to enforce the law, which led to tragedy. In 1989, David Gundy, an Aboriginal man, was shot dead by police during a raid on his Sydney home. The raid was a mistake, and an investigation revealed that Gundy was innocent and had no connection to the crimes being investigated. The shooting sparked public outrage and intensified claims of discrimination against Aboriginal people by law enforcement. Gundy's family later sued the New South Wales Police and received compensation as part of a legal settlement. The case became a symbol of the importance of protecting the rights of vulnerable groups in the law enforcement process.¹³

Thus, by examining cases of wrongful shooting, the imbalance in compensation amounts, and the need for fair and comprehensive benchmarks, this study aims to provide a deeper understanding of the compensation mechanisms for victims of wrongful shooting in Indonesia whether through pretrial proceedings or alternative dispute resolution methods to achieve substantive justice and better protection of human rights.

2. METHOD

This study used a normative juridical approach, focusing on library research and secondary data. Primary legal materials, which have binding authority, include laws, court decisions, and official records. These form the basis of legal analysis. The study referred to several key regulations, including Law No. 1 of 1946, Law No. 8 of 1981, Law No. 1 of 2023, Law No. 31 of 2014, Government Regulation No. 92 of 2015, and Police Regulation No. 7 of 2022. Secondary legal materials—such as legal books, journals, and commentaries—though not binding, provide essential interpretations and insights that support legal understanding.¹⁴ This normative legal research emphasizes the prescriptive nature, because it is a solution or solution to legal issues that occur in society. Prescriptive study is generally prepared for practical purposes in the law enforcement process.¹⁵ This study also provided an explanation of what should be required (evaluative). This study is a literature study. The legal materials written in this study come from literature studies. Therefore, the legal material collection technique used for this study is literature review and documentary.

3. DISCUSSION

3.1. Mechanism of Submission and Provision of Compensation For Victims of Wrongful Shooting In Pretrial According To Criminal Procedure Law In Indonesia

If a person is a victim of wrongful shooting by police officers or other security forces, one of the legal steps that can be taken is through pre-trial. Pre-trial is a legal process

¹² Ian Gordon and Seumas Miller, "The Fatal Police Shooting of Jean Charles de Menezes: Is Anyone Responsible?," in *Shooting to Kill: Socio-Legal Perspectives on the Use of Lethal Force* (Hart Publishing, 2012), 216–37.

¹³ Thalia Anthony et al., "No Justice, No Peace: Police Necroautomobility and Lack of Accountability," in *Unsettling Colonial Automobilities: Criminalisation and Contested Sovereignities* (Emerald Publishing Limited, 2023), 79–101.

¹⁴ Mahmud Marzuki, *Penelitian Hukum: Edisi Revisi* (Prenada Media, 2017).

¹⁵ Irwansyah Irwansyah, "Penelitian Hukum: Pilihan Metode & Praktik Penulisan Artikel," *Yogyakarta: Mirra Buana Media* 8 (2020).

conducted before the case is heard in court.¹⁶ In pre-trial, the victim has the right to file a claim for compensation related to the losses he experienced due to the action. Looking at the habits of the community when filing a claim for compensation in pre-trial is often not separated from the claim for rehabilitation. If we look at the reason, it is rational because when a person is named as a suspect, arrested, and detained, the suspect has automatically soiled his position and a good name in his environment because of the prejudices that have befallen him. However, we are only discussing compensation in this discussion, given the issues.

Pre-trial compensation claims are constrained to losses from unlawful or erroneous arrests, detentions, prosecutions, trials, or other actions. The fundamental objective of these claims is to ensure that victims of arbitrary or unlawful actions perpetrated by security forces receive adequate financial redress.¹⁷

It should be underlined here that in filing a claim for compensation due to a wrongful shooting, the main reason for claiming compensation is not the wrongful shooting but because the arrest was made not on the person (disqualification in person),¹⁸ which means that the person arrested was mistaken. The person concerned has explained that the person arrested was not him. However, he was still detained, and later, it really turned out that there was a mistake in the arrest. Since, in the context of this discussion, the arrestee was shot but did not lose his life, the consequences of the wrongful arrest are material and even immaterial losses if the wrongful arrest results in a fatal disability. A person's wrongful arrest, as previously delineated, should not result in the egregious error of wrongful conviction, wherein an individual is presumed to be guilty despite a lack of evidence of wrongdoing.¹⁹

The pre-trial process begins with applying to the District Court where the incident occurred or where the victim resides. The application must include reasons and evidence showing the unlawfulness of law enforcement actions. The court will then examine the validity of the arrest or action based on evidence from both parties. The victim may claim compensation if deemed invalid, which the court will decide based on the evidence presented. However, it should be noted that pre-trial proceedings cannot guarantee that a compensation claim will be accepted. The final decision remains with the court and depends on the facts. If a compensation claim is not filed in pre-trial, the victim or his/her heirs still have the option to file a claim for compensation with the head of the district court following the civil procedure law. Although this process falls under the jurisdiction of civil courts, it has different requirements and procedures²⁰. Pretrial cases will be decided no later than the seventh day after the case begins to be examined by the court, not after the request for compensation is

¹⁶ Anang Shopfan Tornado, M H SH, and M Kn, *Praperadilan: Sarana Perlindungan Tersangka Dalam Sistem Peradilan Pidana Indonesia* (Nusamedia, 2019).

¹⁷ Andi Nurul Asmi and Hambali Thalib, "Hak Ganti Kerugian Korban Penangkapan Tidak Sah Dalam Sistem Peradilan Pidana," *Journal of Lex Theory (JLT)* 1, no. 1 (2020): 99–115.

¹⁸ S H M Yahya Harahap, "Pembahasan Permasalahan Dan Penerapan KUHAP Penyidikan Dan Penuntutan," 2019.

¹⁹ Irina Zakirova, "An Analysis of Issues at Pre-Trial Proceedings Leading to Wrongful Convictions in No Crime Cases: There Was No Crime, but They Did the Time," *A/b. L. Rev.* 82 (2018): 843.

²⁰ Dimas Tiga Saputra, "Ganti Kerugian Dan Rehabilitasi Dalam Perkara Pidana" (Skripsi, Universitas Muhammadiyah Magelang, 2017).

submitted to the court following Article 82 Paragraph (1) Letter c of the Criminal Procedure Code. The same Article and Paragraph (e) also state that if a request for compensation has been filed at the investigation stage and then at the prosecution stage a pretrial is filed again, it is allowed, if it is a different request.

Facing legal issues can be challenging, especially for victims. In Indonesia, seeking competent legal assistance is crucial. An experienced lawyer helps victims understand their rights, navigate legal procedures, and handle tasks like document drafting, court representation, and negotiations. This study focuses on cases of wrongful shooting during suspect arrests up to the pre-trial process, exploring alternative solutions when pre-trial results are unsatisfactory. It does not address the prosecution or trial process, which concerns whether the defendant committed the alleged crime. This novelty in the pre-trial process is a key aspect of the study.

The implementation of compensation payments as a form of fulfillment of claims that require the provision of a sum of money due to arrest, detention, or other actions without reasons following the law or due to errors regarding identity or application of the law, as described in the Criminal Procedure Code. No matter what people do, if they are within the jurisdiction of Indonesian law, they must still use the Indonesian legal system. The legal system is often called positive law (*ius constitutum/ius positum/ius operatum*),²¹ referring to the legal regulations in force at a current place and time.

In Indonesia, the separation between public and private law regulates interactions between individuals, the government, and between individuals. For the compensation regulations to be effective, they must ensure fairness and prevent manipulation for personal or group gain. Transparency and accountability are essential in ensuring fair compensation, particularly in cases involving punitive damage, where the focus should be on victim recovery and social justice. The legal system must protect vulnerable groups and prevent their exploitation by more powerful individuals. While the Criminal Procedure Code regulates compensation submissions, it still contains gaps that hinder proper implementation, as evidenced by ongoing victims. This study will review the relevant articles and emphasize that compensation claims should be granted based on the judge's considerations of truth and justice.²²

Besides being regulated under Government Regulation No. 92 of 2015, which amends Government Regulation No. 27 of 1983 on implementing the Criminal Procedure Code, wrongful arrest is also considered a violation committed by the Indonesian National Police (POLRI) in practice.²³ This means that any unlawful or erroneous arrest by law enforcement officers can be deemed abuse of authority, potentially leading to legal consequences and claims for compensation by the victims. According to Article 1, Paragraph 22 of the Criminal Procedure Code, a victim of an investigator's mistake may be entitled to compensation. This

²¹ Umar Said Sugiarto, *Pengantar Hukum Indonesia* (Sinar Grafika, 2021).

²² C V Literasi Nusantara Abadi, "PERLINDUNGAN HUKUM PADA KORBAN SALAH TANGKAP," 2023.

²³ "Peraturan Pemerintah Nomor 92 Tahun 2015 Tentang Perubahan Kedua Atas Peraturan Pemerintah Nomor 27 Tahun 1983 Tentang Pelaksanaan Kitab Undang-Undang Hukum Acara Pidana," Pub. L. No. 92 (2015).

code ensures remuneration for unlawful arrest, detention, prosecution, or trial instances.

In addition, according to,²⁴ in carrying out its role as law enforcement, POLRI must follow certain legal principles that guide in various situations, which include; (1) The principle of legality, which emphasizes the importance of every POLRI action to always be in accordance with applicable legal provisions; (2) The principle of obligation, which is the responsibility of POLRI in managing community issues that still require special consideration or discretion because it has not been specifically regulated by law; (3) The principle of participation, where POLRI cooperates with elements of the community in organizing self-security in order to achieve legal compliance among the community; (4) The preventive principle, which advises POLRI to prioritize prevention in dealing with social problems before resorting to harsher or repressive measures; and (5) The principle of subsidiarity, which requires POLRI to take over tasks from other agencies in certain situations to avoid escalation of problems before they can be handled by more specific agencies.

Regulation of the Indonesian National Police Number 7 of 2022 outlines the Police Professional Code of Ethics, covering four key areas: state, institutional, societal, and personal ethics. These guidelines aim to ensure police officers act responsibly and uphold integrity while performing their duties, aligning their actions with state values, institutional norms, and public trust.²⁵ Wrongful arrest constitutes the implementation of systematic human rights violations and is a grave crime. Consequently, handling such cases must be extraordinary.²⁶ Victims have the legal right to initiate legal action against law enforcers who have wrongfully convicted them in a criminal or civil case. Initiating a compensation claim is governed by the provisions enumerated in Articles 81 and 95 of the Criminal Procedure Code. The second and third paragraphs of Article 95 further delineate these articles. Article 77, Paragraph b, of the Criminal Procedure Code is also pertinent. For more clarity, we will elaborate on the procedure for filing a compensation claim as follows: 1) The level of examination of the case at the level of investigation or prosecution: So if the case does not proceed to the level of examination in court, meaning that the case only reaches the level of investigation or the prosecution is discontinued perhaps due to insufficient evidence or other tools, then the request is addressed to the chairman of the District Court, in the following manner; (a) The first step is to file a pretrial motion to determine the validity of the arrest or detention. Once a pretrial decision has been obtained, the next step is to seek compensation. Therefore, there is a two-stage process, with the first stage evaluating the legality of the forced action and then filing a compensation claim. If the legal action is deemed legal, a claim for damages cannot be filed or rejected. Conversely, if the action is deemed invalid, the examination process will continue by assessing the amount of compensation that can be received;²⁷ (b) Second, by filing a pretrial

²⁴ Ali Fathani Hamdan, "Analisis Yuridis Terhadap Oknum Polisi Yang Melakukan Tindak Pidana Penyalahgunaan Narkotika Dalam Upaya Penegakan Kode Etik," *Jurnal Negara Dan Keadilan* 11, no. 1 (2022): 27–34.

²⁵ Wulan Dianning Sari, "Penegakan Hukum Terhadap Oknum Polisi Yang Melakukan Tindak Pidana (Studi Di Propam Polda Jatim)," *Dinamika* 29, no. 1 (2023): 6857–70.

²⁶ Margono, "Perlindungan Hukum Terhadap Korban Salah Tangkap Dalam Tindak Pidana Menurut KUHP."

²⁷ Saputra, "Ganti Kerugian Dan Rehabilitasi Dalam Perkara Pidana."

proceeding at the same time, in addition to determining whether or not the arrest, detention, search, seizure, termination of investigation or prosecution, or other actions that are not based on the law, then after there is a pretrial determination, a compensation claim is also made. Thus, only one process is taken, namely the simultaneous process of examining whether the action and the compensation claim are valid, so if the action is valid, the compensation claim is also rejected; conversely, if it is deemed invalid, an assessment of the amount of compensation that can be granted is immediately determined. 2) The level at which the case is brought before the court: Filing a compensation claim in court follows a straightforward procedure as long as it refers to Article 7(1) of Government Regulation No. 92 of 2015 and Article 95(3)-(4) of KUHAP. The process is based on two principles: (a) the claim must be submitted to the District Court with jurisdiction, not through pretrial, as compensation requires substantive judicial review; and (b) the claim can only be filed after a final and binding verdict (*inkracht*) to avoid legal conflict. These provisions aim to protect victims' rights while ensuring procedural order.²⁸

Once a decision in the form of a stipulation has been issued, the finance department is responsible for executing the payment to the entitled party based on that stipulation. However, the procedure is not as straightforward as it may seem, as the implementation of compensation payments must adhere to the procedural requirements outlined in Article 10 of Government Regulation (PP) No. 92 of 2015 and the Decree of the Minister of Finance of the Republic of Indonesia Number 983/KMK.01/1983. The process involves several stages: (1) The District Court provides an excerpt of the compensation decision to the applicant within three days of its issuance, serving as an official notification rather than the actual payment, with copies also sent to the public prosecutor, investigator, and the Director General of Budget at the local State Treasury Office; (2) The Chief of the District Court then submits a request for fund allocation after the compensation has been granted; (3) The Director General of Budget issues a Certificate of Authority (*Surat Kuasa Otorisasi/SKO*) as the formal approval for payment; (4) The SKO is handed over to the recipient, who must then submit a payment request in accordance with the provisions of Article 3; (5) The payment request is submitted to the local State Treasury Office (*Kantor Pelayanan Negara/KPN*) for further processing; (6) The request is reviewed by the Chief of the District Court before being forwarded to the KPN; (7) The District Court Chief formally submits the request to the KPN; and (8) Based on the SKO and Payment Request Letter (*Surat Perintah Pembayaran/SPP*), the KPN issues a Payment Order (*Surat Perintah Membayar/SPM*), which is then disbursed to the recipient. These structured procedures ensure transparency, accountability, and compliance with financial regulations in executing compensation payments.

Government Regulation No. 92/2015 mandates that the Minister of Finance must pay compensation within 14 working days after receiving the application. Therefore, police must act professionally to avoid state losses from wrongful arrests. If the case escalates to court, victims of mistaken police shootings can seek restitution under Government Regulation No.

²⁸ Asmi and Thalib, "Hak Ganti Kerugian Korban Penangkapan Tidak Sah Dalam Sistem Peradilan Pidana."

44/2008. The process is further detailed in Government Regulation No. 1/2022, ensuring victims receive proper redress and support, reinforcing the state's duty to uphold justice.²⁹

The previous explanation outlines Indonesian law's normative process of requesting and granting compensation. In comparison, Bangladesh recognizes the principle of compensation for wrongful conviction and detention, though it lacks a specific legal framework detailing victims' right. Courts can mandate compensation, but international standards often guide its implementation. This chapter will examine the adequacy of such compensation in Bangladesh.³⁰ Bangladesh lacks specific laws or binding precedents on wrongful conviction and detention. However, courts have occasionally been awarded compensation. In **Bilkis Akhter Hossain v. Bangladesh** (1997), the court granted 100,000 takas for illegal detention, citing constitutional rights violations. In another case, Javed Ali was wrongfully detained for 13 years and received 20 lakh takas. While these awards offer redress, they often fail to restore victims' lives fully.³¹

Various legal frameworks govern the provision of compensation in the United States, each distinct in its particulars. In the United States, for instance, victims of wrongful conviction and detention can seek redress through various channels, including lawsuits grounded in common law torts, moral responsibility claims, or claims under civil rights laws.³² In most legal systems, victims of wrongful conviction and detention can obtain compensation from relevant legal provisions. However, it should be noted that not all jurisdictions implement these legal provisions, and the specific criteria and compensation amounts can vary significantly from one jurisdiction to another. Furthermore, the applicability of these laws varies geographically across the United States, underscoring the need for a comprehensive examination of the legal framework governing compensation for wrongful conviction and detention.³³

Each state in the United States establishes a distinct range of compensation for individuals who have been wrongfully imprisoned. For instance, Wisconsin offers a range of 5,000 to 25,000 dollars per year, Texas provides 80,000 dollars annually in addition to an annual annuity, and the federal government allocates 50,000 dollars per year. Notably, in 2007, a federal court awarded the maximum compensation of 101.7 million dollars to four individuals and 47 million dollars to one individual in a separate case. In contrast, Bangladesh has yet to implement legislation governing the compensation of individuals who have been wrongfully convicted or detained. This contrasts with the United States, which has established specific compensation amounts.³⁴

²⁹ Muhammad Adiguna Bimasakti, "Penyelesaian Sengketa Di Ombudsman Dan Di Pengadilan Mengenai Ganti Kerugian Dalam Pelayanan Publik," *Jurnal Hukum Peratun* 2, no. 2 (2019): 213–34.

³⁰ Ummey Iffat, "Legal Rights and Remedies of the Victims of Wrongful Convictions and Incarceration in Bangladesh: Is It Sufficient to Provide Compensation Only?" (2023), <https://doi.org/10.13140/RG.2.2.28448.80642>.

³¹ Iffat.

³² Meghan J Ryan, "Compensation for Wrongful Conviction and Incarceration in the United States," *SMU Dedman School of Law Legal Studies Research Paper*, no. 534 (2022).

³³ Ryan.

³⁴ Iffat, "Legal Rights and Remedies of the Victims of Wrongful Convictions and Incarceration in Bangladesh: Is It Sufficient to Provide Compensation Only?"

In the United Kingdom, the government operates a compensation program for individuals who have been wrongfully convicted of a crime or have been imprisoned for a while longer than what was ultimately determined to be the appropriate sentence. Individuals imprisoned for a period exceeding ten years are eligible for maximum compensation of one million pounds. Those imprisoned for less than ten years are eligible to receive a maximum compensation of five hundred thousand pounds. In the case of Andrew Malkinson, who was wrongfully imprisoned for 17 years, the court ruled that he was not obligated to pay living expenses while in prison and was entitled to full compensation under the scheme.³⁵

In India, victims of wrongful conviction and detention can pursue compensation through various channels, including public, private, and criminal remedies, as well as under Articles 21, 22, and 32 of the Constitution. For instance, in the case of *Rudul Sah v State of Bihar* (1983), the Supreme Court ordered the release and compensation of Rs. 30,000 to the petitioner who was wrongfully detained for 14 years. In another notable case, *Bhim Singh v State of J & K* (1985), the court ruled in favor of compensation amounting to Rs. 50,000 for illegal detention, thereby underscoring the court's stance that violations of fundamental rights warrant redress, even in instances where the individual has been released.³⁶ These wrong beliefs have devastating effects such as changes in society's stigma on victims, careers, and reputations that are not only suffered by the perpetrators, but also their families, relatives, and friends.³⁷

3.2. Alternative Solutions for Victims of Wrongful Shootings Whose Compensation is Not Commensurate with the Losses Suffered

This discussion centers on compensation claims for wrongful arrest involving non-fatal gunshot injuries through the pretrial process. Based on Article 9(2) of Government Regulation No. 92/2015, compensation for serious injury or disability ranges from Rp25 million to Rp300 million, with judges determining the exact amount based on the injury's severity and impact. However, in broader restitution provisions, there is no nominal limit—compensation must reflect actual material and immaterial losses to ensure justice, considering factors like death, injury severity, and psychological harm.³⁸

In Indonesian law, pretrial is one of the mechanisms given to the public to assess and correct the actions of law enforcers who allegedly violate the law. This process is critical when there are allegations of abuse of power or actions that do not follow applicable legal norms. In pretrial cases, victims or applicants for compensation have the burden of proof to show that the actions of law enforcement have indeed exceeded the limits set by the law.

To do so, the victim must craft arguments and gather detailed and concrete evidence. It includes documents, witness testimonies, video footage, or other physical evidence that can

³⁵ Iffat.

³⁶ Mahantesh G S and Mamatha Rangaswamy, "VICTIM COMPENSATION IN INDIA -RECENT ANALYSIS," March 28, 2024.

³⁷ Amina Aamer, Khaliq Ayub, and Rimsha Khan, "Legal Framework on Compensation for Wrongful Conviction in Pakistan: A Comparative Analysis with Washington and England Laws," *Journal of Social Sciences Review* 3 (June 30, 2023): 903–10, <https://doi.org/10.54183/jssr.v3i2.311>.

³⁸ Geofani Lingga Meryadinata, "KOMPENSASI DAN RESTITUSI SEBAGAI BENTUK PERLINDUNGAN NEGARA TERHADAP PEMENUHAN HAK KORBAN TINDAK PIDANA TERORISME," *Dinamika* 31, no. 1 (2025): 11449–67.

support the claim that the action was inappropriate and illegal under the applicable law. In addition, the victim must also be able to prove any harm suffered, be it physical, material, psychological, or even reputational harm resulting from the law enforcement action.

Proof of this element of loss must be clear and measurable so the pretrial judge can assess and provide fair consideration related to the compensation claim. In this regard, victims need to work with a competent lawyer who understands the relevant law's technical aspects and has experience in handling similar cases. This cooperation is essential to ensure that all aspects of the claim are dealt with most effectively, increasing the likelihood of a successful claim and ensuring that justice is served. With proper legal preparation and representation, victims stand a better chance of getting justice and proper compensation for their losses.

It is also inseparable from how the judge who decides the pretrial case will consider the situation. If we look at the petition as a claim for compensation, then, of course, the petition also mentions material and immaterial losses. To put it simply, material loss is the loss that the victim experiences and from which the appropriate compensation may be determined. Material losses that must exist in the context of this discussion are the costs of medical treatment and care for recovery from gunshots.

As for immaterial losses, they are difficult to calculate. According to legal terminology, immaterial means that it cannot be proven.³⁹ The calculation of immaterial losses is based on something that will happen, while something that will happen cannot be ascertained. These immaterial losses include temporary or even permanent loss of enjoyment of life, fear, psychological impact, loss of good name, future opportunities, and disappointment, but still on condition that the amount of compensation must be reasonable.⁴⁰

Compensation amounts are entirely at the judge's discretion, without fixed standards. Judges must consider factors like the victim's socio-economic status and the nature of losses—both material and immaterial. While Article 9(2) of Government Regulation No. 92/2015 caps compensation at Rp300 million for serious injury, actual losses may exceed this, especially with inflation reducing the rupiah's value. Instead of ensuring legal certainty, the fixed cap can create injustice and undermine fairness for victims of wrongful arrest.

Then, because it is felt that the compensation provided in Government Regulation Number 92/2015⁴¹ is not commensurate with what is suffered by victims of shooting by law enforcement officers due to wrongful arrest, there must be alternative solutions for victims other than filing a claim for compensation in the pretrial process. Several solutions can be taken for victims, such as litigation or non-litigation.

The first litigation solution the victim can take is to bring the case into the criminal realm using Article 333 and/or 334 of the Criminal Code. If the old Criminal Code is no longer

³⁹ Rai Mantili, "Ganti Kerugian Immateriil Terhadap Perbuatan Melawan Hukum Dalam Praktik: Perbandingan Indonesia Dan Belanda," *Jurnal Ilmiah Hukum DE'JURE: Kajian Ilmiah Hukum* 4, no. 2 (2019): 298–321.

⁴⁰ Markus Suryoutomo, Siti Mariyam, and Adhi Putra Satria, "Koherensi Putusan Hakim Dalam Pembuktian Ganti Rugi Imateriel Perbuatan Melawan Hukum," *Jurnal Pembangunan Hukum Indonesia* 4, no. 1 (2022): 133–49.

⁴¹ Peraturan Pemerintah Nomor 92 Tahun 2015 tentang Perubahan Kedua Atas Peraturan Pemerintah Nomor 27 Tahun 1983 Tentang Pelaksanaan Kitab Undang-Undang Hukum Acara Pidana.

applicable in the future, then Law Number 1 of 2023 on the Criminal Code must be used. In the new Criminal Code, articles on deprivation of liberty are regulated by different articles with different formulations, namely Articles 446 and/or 447.

According to some experts, the definition of deprivation of liberty has different views. As Wirjono Prodjodikoro and S.R. Sianturi state that deprivation of independence requires strict physical restraint. In contrast, according to R. Soesilo, strict physical restraint is not required. However, it is already a deprivation of independence if a person is told to live in a house but is guarded and restricted in his freedom of life⁴². If the case settlement continues into the criminal realm, it is natural that the dispute cannot be resolved in a family manner. Considering that in addition to the form of accountability and recovery for the victim from the perpetrator, the element of revenge and providing a deterrent must still exist. Because in this context, what is important to underline is how this police officer can be deterred by the actions that have been committed.

When the police, as state representatives, are tasked with maintaining security, they cause worry and fear among the public, which indicates a serious problem in the law enforcement system. Public trust in law enforcement officials is the foundation for maintaining security and public order. If police officer who make mistakes are not punished appropriately, this not only damages the police's image but also erodes public trust in the institution. Therefore, it is imperative to ensure clear accountability and adequate punishment for police who break the law.

In the context of mistaken shooting cases involving law enforcement officers, it is essential to formulate a compensation concept that not only guarantees an acknowledgment of the error but also provides substantive justice for the victim or their family. The compensation provided cannot be standardized but must be adjusted to the loss experienced by the victim. Therefore, it is necessary to formulate a compensation mechanism with a proportional value range that considers the loss category, such as death, serious injury, or minor injury. For victims who die, compensation must include the value of material losses (such as loss of income or funeral costs) and immaterial losses for the loss of family members. For victims who suffer serious or minor injuries, compensation can be calculated based on medical costs, physical and psychological recovery, and the long-term impact on the victim's social and economic life.

In addition, clarity regarding this compensation range is important to avoid subjectivity in the compensation settlement process while strengthening the accountability of law enforcement officers in carrying out their duties. The state, as the primary holder of responsibility in guaranteeing the human rights of citizens, is obliged to ensure that victims of mistaken shootings receive comprehensive justice, not only through criminal or disciplinary processes against the perpetrators but also through real recovery of the victims' suffering.

⁴² Jisril Timotius Menajang, "TINDAK PIDANA DENGAN SENGAJA DAN MELAWAN HUKUM MERAMPAS KEMERDEKAAN SESEORANG MENURUT PASAL 333 KUHP (KAJIAN PUTUSAN MAHKAMAH AGUNG NOMOR 233 K/PID/2013)," *LEX CRIMEN* 7, no. 7 (2018).

Thus, the regulation of proportional and measurable compensation will be an integral part of a humanistic, responsive, and just legal protection system.⁴³

The application of deterrent effects should be a priority in handling cases where police are involved in unethical or illegal acts. It is important not only to punish the guilty but also to prevent similar incidents in the future. Severe and appropriate punishment for police misconduct will send a clear message to all police officers that any deviation from the rules and ethics of the profession will not be tolerated.

Furthermore, a transparent system and effective oversight mechanism should evaluate and monitor police behavior. Continuous training and education on police ethics should also be emphasized to build a police culture that respects citizens' rights. In this way, the police can perform their duties more carefully and ensure they truly become the community's protectors and servants.

Finally, the public should also be involved in monitoring police activities through various effective communication channels between the public and the police. The existence of independent institutions that can receive reports and complaints regarding police behavior is also important to support transparency and accountability. Through these measures, public trust in the police can be restored, and the police can be more effective in carrying out their duties as guardians of security and order.

Using litigation solutions through criminal channels as the first solution, the *primum remedium* principle is also applied in this context. *Primum remedium* is a principle that applies criminal law as the leading choice in the law enforcement process. In *primum remedium*,⁴⁴ criminal law no longer emphasizes medicine or the last resort to solve a problem but instead emphasizes the deterrent effect on the suspect. Under this issue, police officers who have committed negligence should be prioritized as a deterrent effect rather than a cure for the problem. By doing so, it is hoped that there will be no future losses.

Suppose a dispute extends into the criminal justice process. In that case, it is essential to recognize that victims of wrongful police shootings resulting from mistaken arrests have the right to seek restitution through the court. This right is regulated under Government Regulation Number 44 of 2008, which governs the provision of compensation, restitution, and assistance to witnesses and victims. Additionally, the procedural mechanism for requesting and disbursing compensation, restitution, and assistance is outlined in Government Regulation Number 1 of 2022, which establishes the procedures for processing and granting restitution and compensation to crime victims. According to Article 1, Point 1, restitution is a financial payment made by the perpetrator or a third party to the victim or their family. While its essence is like a compensation claim through the pretrial process, the key distinction lies in the absence of a predetermined minimum and maximum amount in restitution and the fact that the payment obligation falls on the perpetrator rather than the state. Moreover, in filing

⁴³ Meryadinata, "KOMPENSASI DAN RESTITUSI SEBAGAI BENTUK PERLINDUNGAN NEGARA TERHADAP PEMENUHAN HAK KORBAN TINDAK PIDANA TERORISME."

⁴⁴ Elsa Priskila Singal and Dkk, "Primum Remedium Dalam Hukum Pidana Sebagai Penanggulangan Kejahatan Kerah Putih (Money Laundering)," *Lex Crimen* 10, no. 6 (2021): 197.

a restitution claim, victims should also be entitled to physical and psychological protection, as mandated by Law Number 31 of 2014, which amends Law Number 13 of 2006 on Witness and Victim Protection. The concept of restitution emerged as a response to the perception that the criminal justice system disproportionately focused on perpetrators, often neglecting the interests and rights of victims, thus highlighting the need for a more victim-centered approach to justice.⁴⁵

Next, it is said in PERMA Number 1 Year 2022's Article 4 Letter b that restitution may also be sought as payment for material and immaterial losses brought on by suffering directly connected to criminal conduct. Then, in Letter c, compensation can also be requested instead of medical and/or psychological treatment costs. The solution to bring this dispute to the criminal realm with the request for restitution is undoubtedly not the most ideal, considering that the implementation of restitution in this country is still not optimal. However, the criminal solution offers what other solutions, like mediation and/or civil lawsuits, offer. These solutions give victims a sense of justice while offering something that these other options do not: the criminal justice process experienced by those who commit crimes, like incarceration, prosecution, and examination in court. In addition, there is also coercion from the judge examining this case to be able to provide restitution for victims through his decision. Last but not least, punishment can provide commensurate compensation as a form of recovery, which has recently become a priority over revenge in the criminal justice system.

The Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, adopted by the United Nations (*PBB*) in 1985, defines victims as individuals or groups who suffer harm due to actions or omissions that violate a country's criminal laws, including legal provisions preventing the abuse of power. This harm can take various forms, such as physical or psychological suffering, emotional distress, financial losses, or significant violations of fundamental human rights. Recognizing the impact of such harm, the declaration affirms victims' right to restitution and compensation as a means of justice. According to UN General Assembly Resolution No. 40/34 (November 29, 1985), victims must receive full compensation for their losses, be informed of their rights, and be provided with fair restitution by perpetrators or responsible third parties. If the perpetrator cannot fully compensate the victim, the state should step in to offer financial assistance. Additionally, victims should have access to necessary material, medical, psychological, and social support to aid their recovery and reintegration. This framework underscores the shared responsibility of perpetrators, the state, and society in ensuring justice, protection, and adequate support for victims of crime and abuse of power.

However, sometimes the implementation of this general witness and victim protection policy still has several obstacles, including;⁴⁶ (1) The strength of the witness and victim protection agency (LPSK) is not yet full (capacity building); (2) Cooperation with other related

⁴⁵ Mahrus Ali and Ari Wibowo, "Kompensasi Dan Restitusi Yang Berorientasi Pada Korban Tindak Pidana," *Yuridika* 33, no. 2 (2018): 260, <https://doi.org/10.20473/ydk.v33i2.7414>.

⁴⁶ Bambang Julianto, "Perlindungan Hukum Terhadap Saksi Dan Korban Dalam Sistem Peradilan Pidana Di Indonesia," *Jurnal Lex Renaissance* 5, no. 1 (2020): 20–31, <https://doi.org/10.20885/jlr.vol5.iss1.art2>.

institutions is not optimized; and (3) The paradigm of law enforcement in responding to the law on witness and victim protection.

Then, suppose the criminal settlement cannot provide satisfactory results. In that case, law as a scientific field that provides solutions to a concrete problem (prescriptive), can still provide an alternative solution for victims, namely shifting this problem to a civil dispute, namely by filing a lawsuit against the law to the perpetrator personally. However, it would be better if, before filing a lawsuit in court, the victim and the perpetrator conduct mediation or negotiation first.

In Indonesia, non-litigation dispute resolution methods such as mediation and negotiation are important in the justice system because they emphasize the principle of deep kinship, which is part of the local tradition in resolving problems. Both methods offer a space for the parties to reach a mutual agreement, reducing tension and allowing both parties, i.e., the victim and the police officer, to maintain harmonious social relations after dispute resolution. Mediation facilitates dialogue guided by a neutral mediator, who assists in identifying shared interests and formulating solutions that are acceptable to all parties involved.

The issuance of the Supreme Court Regulation (PERMA) is based on the consideration that mediation serves as a faster, more cost-effective dispute resolution mechanism while also providing the disputing parties greater access to justice and the possibility of a mutually satisfactory outcome. As a general standard, this regulation establishes guidelines for implementing mediation, integrating it into trial procedures at the District Court level. Given its significance, mediation holds an essential position within the framework of PERMA. However, suppose mediation or negotiation fails to yield a satisfactory resolution. In that case, the victim retains the right to pursue justice through a civil claim based on tort (*perbuatan melawan hukum* or *PMH*). Such a lawsuit acts as a last resort when non-litigation efforts prove ineffective. In this context, civil law offers victims the legal means to seek compensation for losses incurred due to unlawful actions committed by police officers or other state actors.⁴⁷

Through this process, the court can make a decision that is binding on both parties. This ideally restores the victim's position to the position before the unlawful act occurred and provides a deterrent effect to the guilty person. Although more complicated and time-consuming, this process ensures that any unlawful act is not simply let go without consequences.

Meanwhile, Unlawful Acts or PMH are regulated in Article 1365 (Civil Code), namely unlawful acts must at least fulfill the following elements: (1) The existence of an unlawful act; (2) The existence of fault; (3) The existence of loss; and (4) There is a causal relationship between the tort, fault, and loss.

A tort arises from an act of the perpetrator, which can take the form of either an active action or a failure to act despite a legal obligation to do so, as mandated by applicable laws

⁴⁷ Dian Maris Rahmah, "Optimalisasi Penyelesaian Sengketa Melalui Mediasi Di Pengadilan," *Jurnal Bina Mulia Hukum* 4, no. 1 (2019): 1, <https://doi.org/10.23920/jbmh.v4i1.174>.

or regulations. Unlike contractual obligations based on mutual consent and a lawful cause (permissible causa), tortious liability exists independently of any agreement between the parties. It distinguishes tort law as a legal framework designed to protect individuals from harm caused by wrongful acts, whether intentional or due to negligence. In many legal systems, tort encompasses a wide range of unlawful acts, including personal injury, property damage, and defamation, with remedies primarily focused on compensating the victim for their losses. The absence of consent as an element in tort law underscores its function as a mechanism for upholding social responsibility and ensuring that individuals or entities do not cause harm to others without legal consequences.⁴⁸

Compensation for tort cases (*onrechtmatige daad*) is not always provided in monetary payment. In a ruling by the Hoge Raad on May 24, 1918, it was established that the most effective form of compensation is one that aims to restore the victim's condition to its original state or at least bring the person as close as possible to their condition before the wrongful act occurred. The principle underlying this decision is that restoring the actual situation is often more appropriate than simply awarding financial compensation, as monetary payment merely represents an equivalent value rather than directly addressing the harm suffered.⁴⁹

Suppose a person is suspected of fulfilling the elements of a criminal offense. In that case, it is also possible—though not always—that the same act simultaneously fulfills the elements of a tort (unlawful act in civil law). In such cases, a single action may give rise to both criminal and civil liability, allowing the concurrent imposition of both sanctions. It means that the victim has the right to seek civil compensation through a lawsuit, while at the same time, the perpetrator may also face criminal sanctions through the criminal justice process. This duality in legal consequences underscores the intersection between criminal law and civil law, where certain unlawful acts violate statutory provisions and cause harm or loss to individuals, thereby warranting civil remedies. It is not uncommon to find that certain criminal acts also constitute acts against the law in the civil sense. Examples include offenses such as physical assault, unlawful detention, defamation, and other acts that not only breach criminal statutes but also infringe upon the rights of others, entitling victims to both punitive and compensatory relief.⁵⁰

In the cassation level decision, the High Court also stated that what is meant by unlawful acts is not only violating written laws as interpreted at that time, but also includes in the definition of unlawful acts any action;⁵¹ (1) Which violates the rights of others guaranteed by law; or (2) Actions that are contrary to the legal obligations of the perpetrator; or (3) Acts that

⁴⁸ Rizqy Rizqy and Syahrizal Syahrizal, "Tinjauan Yuridis Terhadap Perbuatan Melawan Hukum Dan Sanksi Nya," *Jurnal Justisia: Jurnal Ilmu Hukum, Perundang-Undangan Dan Pranata Sosial* 3, no. 2 (2019): 239, <https://doi.org/10.22373/justisia.v3i2.5931>.

⁴⁹ Mantili, "Ganti Kerugian Immateriil Terhadap Perbuatan Melawan Hukum Dalam Praktik: Perbandingan Indonesia Dan Belanda."

⁵⁰ TITIN APRIANI, "Konsep Perbuatan Melawan Hukum Dalam Tindak Pidana," *Ganec Swara* 13, no. 1 (2019): 43, <https://doi.org/10.35327/gara.v13i1.61>.

⁵¹ Gita Anggreina Kamagi, "Perbuatan Melawan Hukum (Onrechtmatige Daad) Menurut Pasal 1365 Kitab Undang-Undang Hukum Perdata Dan Perkembangannya," *Jurnal Lex Privatum* 6, no. 5 (2018): 57–65.

are contrary to decency (*goedzededen*); or (4) Actions that are contrary to good behavior in society to consider the interests of others.

Then three reasons can be used as a basis for filing a civil lawsuit against the authority if the authority has caused harm to individuals or private parties;⁵² (1) The ruler is considered to have violated certain rights; (2) The actions taken by the authorities are considered to be contrary to the obligations they should fulfill according to the law; and (3) Rulers are perceived as lacking caution in their actions, taking into account what is considered appropriate and proper in social interactions.

4. CONCLUSION

If a person becomes a victim of wrongful arrest by the police, one of the legal steps that can be taken is through a pretrial by submitting a request for compensation. Pretrial is a legal process before the case is heard in court. The mechanism for compensating victims of wrongful arrest is regulated in the Criminal Procedure Code, Government Regulation Number 92 of 2015, and Decree of the Minister of Finance Number 983/KMK.01/1983. Alternative solutions for victims of wrongful shootings whose compensation is not commensurate with the losses suffered by; (1) Conducting non-litigation dispute resolution, namely negotiation or mediation; (2) Raising the case to the criminal realm by charging the article of deprivation of liberty and submitting a request for restitution; and (3) Shifting the case to a civil lawsuit with a tort claim. The government should revise Government Regulation No. 92/2015, which should not require a minimum and maximum amount for compensation. The amount of compensation should be left to the discretion of the District Court judge examining the case by considering the losses suffered by the victim.

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⁵² Syukron Salam, "Perkembangan Doktrin Perbuatan Melawan Hukum Penguasa," *Nurani Hukum* 1, no. 1 (2018): 33, <https://doi.org/10.51825/nhk.v1i1.4818>.

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