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## Human Rights and Legal Protection for Victims of Arrest by Police in Indonesia

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### Abstract

The Indonesian National Police (Polri) plays a crucial role in upholding security and public order as a law enforcement agency, directly engaging with civil society and carrying out various law enforcement tasks in Indonesia, including investigations. Nevertheless, incidents of wrongful arrests by the Police persist, indicating investigators' actions lacking a clear basis and leading to arbitrary arrests without due consideration. Such flawed investigations can result in serious issues, violating the rights of wrongly arrested individuals and undermining public trust in the police and the justice system. This study adopts a normative juridical approach, drawing on legal principles, relevant laws, regulations, and literature to examine human rights and legal protection for victims of wrongful arrests by the police in Indonesia. The analysis highlights the urgent need to bolster human rights protection in law enforcement. To address this, greater efforts are required to enhance police officers' understanding and awareness of human rights and legal safeguards for victims of wrongful arrests. Moreover, providing legal redress for victims can be accomplished through compensation and rehabilitation mechanisms, aiming to reinstate violated rights and improve victims' situations. Implementing such mechanisms offers hope for victims to attain proper justice and remedies, while also preventing similar errors in the future and increasing the accountability of law enforcement officials.

### Keywords

Human Rights, Legal Protection, Victims of Arrest, Police

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## 1. Introduction

Indonesia is a country that accepts law as a state ideology to create order, security, justice and prosperity for its citizens. The principles of law and justice form the foundation of the Indonesian legal system (Fauzia et al., 2021). This is reflected in the Preamble to the 1945 Constitution of Indonesia, which states a commitment to realizing a democratic rule of law. As a rule of law, Indonesia recognizes the importance of the rule of law, equality before the law, and protection of human rights (Sulistina et al., 2022). These principles are reflected in various constitutional provisions, laws and other regulations that protect the basic rights of citizens and provide guidelines for the administration of justice. The Indonesian government has a legal system that consists of three branches of power, namely the executive, legislative and judicial branches (Hardini, 2016). These branches of power act independently of each other and supervise each other to maintain the balance of power and ensure fair application of the law. In creating order, security, justice and welfare for its citizens, Indonesia continues to strive to improve and develop its legal system. Through legal reform and improvement of law enforcement agencies, Indonesia is trying to increase the effectiveness of law enforcement and strengthen access to justice for all citizens (Johnson & Svara, 2015).

In the Indonesian legal system, the principle of equality before the law is an important principle. This principle guarantees that everyone has the same rights to be recognized, guaranteed, protected, and treated fairly by law, without discrimination or unequal treatment (Bramantara, 2021; Gumbir & Nurhayati, 2016). This confirms that all individuals have the same right to get fair and equal treatment from the legal system and there should be no discriminatory treatment based on race, religion, gender, ethnicity, sexual orientation, or other factors that are irrelevant in the process. law. Everyone has the right to fair legal recognition, including the right to be given legal protection, legal certainty, and guarantees for their rights (Malik et al., 2021). This means that individuals have the right to have equal access to the justice system, to receive legal assistance if needed, as well as the right to defend themselves and provide a fair defense in legal proceedings. The application of the principle of equality before the law also applies to all aspects of legal life, including law enforcement, application of sanctions, and access to justice. All individuals, regardless of social, economic or political status, have the same rights to be treated fairly and equally by the legal system (Zulfa, 2020; Said & Nurhayati, 2021).

In Indonesia, one of the state apparatuses that carries out legal functions is the Indonesian National Police (Polri). Mentioned in Law Number 2 of 2002 concerning the Indonesian National Police, Article 1 number (1) what is meant by the Police is "All matters relating to the functions and institutions of the police in accordance with the Laws and Regulations". Article 1 point (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 public order and security, law enforcement, protection, protection, and service to the community". The Indonesian National Police has an ideal role which is stated in Law Number 2 of 2002 concerning the Indonesian National Police, which states that the National Police in carrying out their duties upholds human rights. The role of the Indonesian National Police (Polri) is formulated: "The Republic of Indonesia National Police is a state instrument that plays a role in maintaining public

security and order, enforcing the law, and providing protection, protection and service to the community in the framework of maintaining internal security".

The Indonesian National Police (Polri) is a law enforcement agency that has an important role in maintaining security and public order. Polri deals directly with civil society and is tasked with carrying out various tasks related to law enforcement in Indonesia (Madjida, 2020). One of the actions taken by the Police is an investigation (Sleath & Bull, 2017). In the investigation process, the main focus of the Police is to conduct an investigation to find and find an event that is suspected of being a crime. This investigative action is carried out with the aim of gathering evidence that can reveal clarity about the existence of a crime, as well as to identify and determine the perpetrators. In carrying out investigative actions, Polri investigators are responsible for finding evidence that can corroborate the existence of a criminal act (Akca et al., 2021). They made various efforts to gather information, interrogate witnesses, examine crime scenes, and collect and analyze relevant evidence. The aim of all these efforts is to obtain sufficiently strong evidence so that the crimes that occurred can be uncovered and the perpetrators can be identified (Gardner & Anderson, 2015; Mount & Mazerolle, 2021).

In the context of an investigation, the process of arresting a suspect is an inseparable part of the investigation itself. An arrest is made when the investigator has a strong allegation that the suspect has committed a crime, and this allegation is based on the presence of sufficient evidence. In order to be able to try someone as a defendant, a minimum of two valid pieces of evidence are needed in accordance with applicable law (Moussa et al., 2022). However, there are still cases of wrongful arrest by the Police, in which the process of arresting suspects is carried out without sufficient initial evidence as stipulated in the Criminal Procedure Code (KUHAP). Actions like this show that investigators are acting without a predetermined basis, and seem to be making arrests haphazardly and without careful consideration. Investigations conducted like this can create serious problems (Wang et al., 2016). As well as compromising the rights of individuals who have been wrongly arrested, this can also undermine public confidence in the police and the justice system as a whole. Therefore, it is very important for investigators to carry out their duties with professionalism, integrity, and based on applicable legal provisions (Chowdhury, 2021).

When it is related to Human Rights, an act of arrest or detention that is carried out without a clear basis or sufficient evidence is a violation of individual human rights (Braig, 2018). Everyone has the right to liberty and security of person, and the right not to be arbitrarily detained or arrested. This kind of action violates a person's human rights to be free from arbitrary arrest or detention, and can also damage the basic principles of justice that should be upheld in the justice system. Human rights violations in the context of unlawful arrest or detention can also have serious repercussions for the individuals affected. This can include loss of freedom, injustice, physical or psychological suffering, as well as social and economic losses that may be experienced by individuals and their families.

## **2. Human Rights**

Human rights are a set of rights that are inherent in every individual universally, inseparable, and cannot be contested, based on human dignity, equality, and freedom. Human Rights base themselves on universal principles, including human dignity, justice, freedom, equality, as well as the principles of non-discrimination and protection against abuse of power (Herlin-Karnell,

2019). Human Rights cover a wide range of rights, both civil and political rights as well as economic, social and cultural rights. Civil and political rights include the right to life, freedom of expression, freedom of religion, the right not to be tortured, the right to justice, and the right to participate in the political process. Meanwhile, economic, social and cultural rights include the right to education, decent work, housing, health services, as well as cultural freedom and participation in the cultural life of society (Lamchek, 2020).

Human Rights are universally recognized by international law and are a fundamental foundation in upholding the dignity of every individual, promoting justice, equality and peace in society. Human Rights involve the responsibility of the state and government to respect, protect and implement these rights, as well as the responsibility of individuals and communities to respect the rights of others and promote justice and equality (Srinivasan & Jino, 2016). Protection and fulfillment of Human Rights involves various efforts such as legislation that protects individual rights, a fair judicial system, oversight and monitoring mechanisms, as well as sustainable social and economic development. McFarland (2015) Human rights are universal principles that cannot be violated, and efforts to protect and promote these rights are the joint responsibility of all members of society and state institutions to create a just, civilized and just society for all.

The basic concept of Human Rights involves the fundamental principles that underlie the inherent rights of every individual. These principles include universality, recognizing that human rights apply to all people, regardless of race, religion, gender, or social status (McFarland, 2015). Furthermore, equality is a principle that emphasizes that all individuals are born with the same rights and dignity, so there should be no discrimination in the treatment of them. Human Rights are also based on the principle of freedom, which guarantees freedom of thought, opinion, religion and expression freely without fear of repression or torture (Methven O'Brien & Dhanarajan, 2016).

In addition, the principle of protection is also an important aspect of the concept of human rights. This principle emphasizes that the state and government have a responsibility to protect individuals from abuse of power, violation of rights, and violence (Poe, 2019; Dahlan, 2018). This includes protection against torture, arbitrary detention, discrimination, as well as protection for vulnerable groups such as women, children and minorities. The principle of accountability is also related to the concept of human rights. This holds governments and public institutions accountable for their actions and provides avenues for individuals to file complaints or lawsuits against human rights violations. This principle ensures that there are mechanisms of oversight and justice that enable individuals to obtain recovery, restitution and justice for the violations they experience (McCrudden, 2015). The basic concept of Human Rights aims to ensure justice, freedom and human dignity. These principles serve as guidelines in upholding individual rights, building an inclusive, just and just society, and creating peace and prosperity for all mankind (Kaur, 2017).

### **3. Legal Protection for Victims of Wrong Arrest**

Erroneous arrests in the context of human rights and legal protection for victims of wrongful arrests refer to acts of arrest that are illegal, baseless, or violate individual rights protected by law (Maharani & Dzikra, 2021). Faulty arrest occurs when a person is arrested without sufficient evidence or clear reasons, or when the arrest is made in violation of procedures regulated in the

criminal procedure law. Types of fishing fault can include a number of things. One of them is the arrest without sufficient preliminary evidence, which means that the suspect is arrested without any solid basis to believe he is involved in a crime. Arrests of this kind violate the basic principle that every individual is presumed innocent until legally proven guilty (Sitorus & Diana, 2016). In addition, arrest errors can also occur when an arrest is made without a valid arrest warrant. Arrest warrants are issued by competent authorities, such as judges, based on evidence and decisions related to ongoing legal proceedings. Arrest without a valid arrest warrant may indicate a violation of legal procedures and individual rights. Mistakes in arrests can also occur when arrests are made with violence, intimidation or inhumane treatment. Arrests of this kind violate individual human rights not to be tortured or treated in an inhumane manner (Huey et al., 2021; McCrudden, 2015).

The principles of legal protection for victims of wrongful arrest play an important role in ensuring that the rights of innocent individuals are respected and protected. These principles involve aspects of justice, remedy, and accountability, each of which aims to ensure that victims receive proper justice, adequate remedies, and are held accountable for the violations that have occurred (Nurhayati, 2021). In addition, national and international legal frameworks provide an important basis for the legal protection of victims of wrongful arrest. At the national level, in Indonesia, there are several relevant legal instruments (Hasibuan, 2022). One of them is the 1945 Constitution of the Republic of Indonesia, which guarantees human rights including the right to recognition, security, protection and fair legal certainty for every individual, including victims of wrongful arrest. In addition, the Criminal Procedure Code (KUHAP) regulates the procedures for arrest, detention and investigation, as well as providing protection for innocent victims.

Meanwhile, at the international level, the 1948 Universal Declaration of Human Rights became one of the main instruments stating human rights that must be protected for all individuals. Article 9 of the Declaration recognizes the right to freedom, security and personal integrity, including protection against arbitrary arrest or detention. In addition, the International Pact on Civil and Political Rights in 1966 also provides legal protection for the right to freedom and justice. Indonesia is also a party to various international instruments related to human rights that are relevant to the legal protection of victims of wrongful arrest, such as the Convention Against Torture and Cruel, Inhuman or Degrading Treatment or Punishment, the Convention on the Elimination of All Forms of Racial Discrimination, and the Convention on Children's Rights. Through the ratification and implementation of these instruments, the state is committed to protecting individual rights, including victims of wrongful arrests (Van Boven, 2018).

#### **4. The Role of the Police in Law Enforcement**

The role and responsibility of the police in law enforcement is very important in maintaining public order and security. As a law enforcement officer, the police have broad duties and responsibilities. Where the police are responsible for preventing criminal acts by conducting proactive patrols, supervision, and law enforcement (Maharani & Dzikra, 2021). This involves intelligence gathering, traffic control, and handling emergency security situations. Furthermore, the police also have the responsibility to investigate and arrest the perpetrators of criminal acts. The police conduct investigations, collect evidence, and conduct interrogations of suspects in order to reveal the truth and ensure the perpetrators' responsibility. The investigative process

carried out by the police must comply with legal principles, including respecting human rights and avoiding abuse of power (Brooks & Greenberg, 2021).

In addition, the police also play a role in maintaining order and security in society by handling conflict situations, overcoming security and order disturbances, and providing protection to the community (Sitorus & Diana, 2016). Police play a role in handling incidents of crime, accidents, and providing assistance in emergency situations and crises. As part of the criminal justice system, the police also cooperate with prosecutors and courts in the prosecution and trial processes. The police provide the necessary evidence and information to assist the judicial process, as well as provide testimony in court according to the facts they find in the investigation (Sleath & Bull, 2017). In carrying out its role, the police also have ethical and professional responsibilities. They are expected to behave with integrity, neutrality and uphold individual rights. The police are also expected to involve the community in law enforcement efforts, by building good relations, educating about legal awareness, and receiving reports and complaints from the public (Madjida, 2020).

## **5. Research Methods**

This study uses a normative juridical approach, which is based on legal principles, legal principles, and related laws and regulations or literature relevant to the research context. The data sources used consist of primary and secondary legal materials. Primary legal material is legal material that has authority and consists of statutes, official records, or treatises on making laws and judges' decisions. Among them are the 1945 Constitution of the Republic of Indonesia, the Criminal Code, the Criminal Procedure Code, Law number 2 of 2002 concerning the Indonesian National Police, and Government Regulation (PP) Number 92 of 2015 regarding the Implementation of the Criminal Procedure Code. Meanwhile, the secondary legal material in this research is in the form of law publications that are not official documents, such as textbooks and law journals. Both primary and secondary materials are collected based on the topic problems that have been formulated and classified according to the source and the hierarchy for a comprehensive study. By using this method, research can analyze the relevant legal framework and gain an in-depth understanding of human rights and legal protection for victims of wrongful arrests by the police in Indonesia.

## **6. Results and Discussion**

An analysis of human rights and legal protection for victims of wrongful arrests by the police in Indonesia shows that there is an urgent need to strengthen human rights protection in the context of law enforcement. Victims who were wrongly arrested experienced violations of their basic rights, such as the right to freedom, the right to fair treatment, and the right to privacy. Adequate legal protection should be a priority to prevent illegal or arbitrary arrests from occurring. An evaluation of the existing legal framework shows that there is a gap between the rule of law that is supposed to protect the human rights of victims and its implementation in police practice. Several legal provisions, such as those in the Criminal Procedure Code (KUHAP) or the Law on the Indonesian National Police, provide a strong basis for protecting individual rights.

However, there are weaknesses in the implementation and understanding of these provisions. Factors that influence police arrest errors include lack of knowledge or skills in investigations and law enforcement, systemic factors, and contextual factors. Negligence, carelessness, or disproportionate action on the part of police officers can result in wrongful arrests. Lack of adequate training or understanding of proper fishing procedures and applicable legal standards can be a contributing factor to errors. In addition, pressure to solve cases quickly, lack of resources, and lack of internal oversight can also contribute to wrongful arrests. The emergency context or high social pressure can also affect the actions of police officers.

In this research, it was found that there is a need for more intensive efforts to increase the understanding and awareness of police officers regarding human rights and legal protection for victims of wrongful arrests. Regular and comprehensive training on proper arrest procedures, applicable legal standards and individual rights should be an integral part of the education and training of police officers. In addition, there is a need for strict supervision of the implementation of arrests by the police as well as an effective complaint mechanism for victims who experience violations of their human rights. In terms of the legal framework, it is necessary to evaluate and update it regularly to ensure conformity with the times and the needs of society. Cooperation between law enforcement agencies, civil society organizations and the government is also important to create a transparent, accountable and fair system of law enforcement.

To protect human rights, it is important for law enforcement officials, including the police, to act in accordance with legal principles and respect the rights of individuals involved in the arrest or detention process (Srinivasan & Jino, 2016). This includes ensuring sufficient evidence is available prior to making an arrest, adhering to legal procedures, providing detained individuals access to legal representation, and providing humane treatment during the detention process. In order to prevent cases of wrongful arrest, it is important for Polri to strengthen an effective internal monitoring mechanism and provide strict sanctions against human rights violations that occur during the arrest or detention process. This effort is necessary to prevent violations from occurring, improve the existing system, and ensure comprehensive human rights protection for all individuals in the legal process. It will also maintain public trust in the police, guarantee individual rights, and ensure fair and effective law enforcement.

The legal solution to victims of wrongful arrests or errors in investigations regulated in the Criminal Procedure Code (KUHAP) is to provide compensation and rehabilitation to victims. This mechanism aims to restore the rights that have been violated and restore the condition of victims after experiencing unlawful arrest or unjust detention. Article 95 of the Criminal Procedure Code regulates filing claims for compensation due to illegal detention. According to this provision, victims who experience unlawful arrest or detention that are not in accordance with the provisions of the law can file a claim for compensation. This claim can be submitted to the state, which is responsible for the actions taken by law enforcement officials, including the police. The process of filing a claim for compensation must go through a set legal process. The victim must submit a written application to the competent authority, such as a court, which will evaluate the case. The court will examine the application and consider the evidence and arguments presented by the victim. If it is proven that the victim has been unlawfully arrested or detained, the court may issue a decision to award compensation to the victim.

Apart from compensation, rehabilitation is also an important part of legal settlement for victims of wrongful arrests. Rehabilitation can be in the form of restoring the victim's physical, psychological and social conditions, as well as providing the necessary support and assistance to restore the victim's life after a traumatic experience. With this mechanism for filing claims for compensation and rehabilitation, it is hoped that victims who experience mistakes in investigations can get proper justice and remedies. This is also an effort to prevent the recurrence of similar mistakes in the future and increase the accountability of law enforcement officials in carrying out their duties and responsibilities.

## 7. Conclusion

In an analysis of human rights and legal protection for victims of wrongful arrest by the police in Indonesia, it was found that there is an urgent need to strengthen the protection of human rights in law enforcement. Victims of wrongful arrests experience violations of their basic rights, and adequate legal protection must be a priority to prevent unlawful acts of arrest. An evaluation of the legal framework shows that there is a gap between the rule of law that is supposed to protect the human rights of victims and its implementation in police practice. Lack of knowledge, understanding, and training of police officers regarding proper arrest procedures and applicable legal standards are the main factors causing wrongful arrests. In addition, the pressure to solve cases quickly, lack of resources, and lack of internal oversight also contributed to the error. Therefore, more intensive efforts are needed to increase the understanding and awareness of police officers regarding human rights and legal protection for victims of wrongful arrests. Regular training, close supervision and an effective complaints mechanism need to be implemented. In addition, regular evaluation and updating of the legal framework as well as cooperation between law enforcement agencies, civil society organizations and governments are essential to create a transparent, accountable and fair system of law enforcement. Legal settlement for victims of wrongful arrests can be carried out through mechanisms for compensation and rehabilitation, which aim to restore rights that have been violated and restore victims' conditions. With this mechanism, it is hoped that victims will be able to obtain appropriate justice and remedies, while preventing the recurrence of similar mistakes in the future and increasing the accountability of law enforcement officials.

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