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The Impact Of Error In Persona: Liability Of Police Investigators In Wrongful Arrest Cases

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ABSTRACT

Wrongful arrest in Indonesia is a serious problem in law enforcement that often results in physical suffering, psychological, and social losses for victims. One form of error that often occurs is "error in persona"⁴⁰ which is a misidentification that results in the arrest of an innocent person. This research uses normative juridical method with literature study and³² qualitative analysis to analyze the responsibility of investigators in cases of wrongful arrest. The purpose of this study is to understand the factors that cause errors in persona and their impact on victims and the legal system. The results show that misidentification often occurs due to inaccuracies in evidence collection, pressure to quickly resolve cases, and the use of inadequate investigative methods.²³ In addition, the importance of fulfilling the legal procedures stipulated in the Criminal Procedure Code (KUHP) is crucial to prevent these errors. Reforms in the investigation process, increased capacity of investigators, and the use of modern technology are necessary to minimize the risk of errors and ensure justice and the protection of human rights.

Keyword: Error in Persona, Police Investigators, Wrongful Arrests.

INTRODUCTION

Wrongful arrest in Indonesia is one of the most serious problems in law enforcement, often resulting in physical, psychological and social harm to the victimized individuals. Wrongful arrest usually occurs when an innocent person is detained or accused of being involved in a criminal offense, despite the fact that the individual is not involved. This phenomenon is particularly concerning because it involves various components of the legal system, from the investigation, prosecution, to the judicial process.¹ One form of error that often occurs is "error in persona," which is the misidentification or arrest of the wrong person.² These errors can occur due to inaccuracies in the investigation or the lack of strong evidence to support the correct identification of the suspect.

Error in persona is a legal term that refers to the misidentification of a perpetrator in the law enforcement process, where a person who is actually innocent is instead

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¹ Firman Halawa, "Kebijakan Hukum Pidana Terhadap Tindak Pidana Korupsi Penyalahgunaan Wewenang Dalam Jabatan Pemerintahan Menurut Undang-Undang Nomor 30 Tahun 2014" *SOSEK: Jurnal Sosial dan Ekonomi*, Vol 1 Issue 1 (2020): 41

² F²⁴ dhila Ayu Pramesti, dkk, "Jaminan Ganti Rugi Serta Rehabilitasi Terhadap Korban Error In Persona" *Jurnal Hukum, Politik dan Ilmu Sosial*, Vol 3 No 3 (2024): 251

accused, arrested, or even convicted of a crime he or she did not commit.³ These errors occur because law enforcement officials, especially investigators, misidentify the actual perpetrator of the crime, either due to inaccurate information, erroneous testimony, or failures in the investigation process. In a legal context, the term *error in persona* literally means “mistake of person” or “mistake in identity,” which describes a situation when an innocent person is victimized by the failure of the legal system to identify the actual criminal actor.⁴ These errors often occur in the early stages of an investigation or arrest, where the initial evidence gathered is not yet strong enough to accurately identify the perpetrator. At this stage, investigators are in the process of gathering information, which may come from unverified sources, such as eyewitness testimonies, incident reports, or ambiguous visual evidence, such as low-quality video footage. As a result, in some cases, investigators can easily get caught up in incorrect assumptions and target innocent individuals as perpetrators. Errors in persona can also occur due to the use of inadequate investigative methods, including failure to utilize modern forensic technology, or the pressure faced by investigators to quickly resolve cases that attract public attention.

In the Indonesian legal system, the regulations governing the responsibilities of law enforcement officials, especially investigators, are very clear. Investigators have a central role in collecting evidence, identifying suspects, and ensuring every action is carried out in accordance with applicable legal procedures.⁵ One of the main guidelines is the Criminal Procedure Code (KUHP), which regulates how investigations and arrests should be conducted fairly and lawfully. The investigation and arrest process must follow the standard procedures set out in KUHP to ensure fairness.⁶ One of the main guidelines is the Criminal Procedure Code (KUHP), which regulates how investigations and arrests should be conducted fairly and lawfully. The investigation and arrest process must follow the standard procedures set out in KUHP to ensure fairness.⁷

Arrest, as one of the investigator's powers stipulated in Article 18 of KUHP, must be carried out with clear legal basis and sufficient preliminary evidence. Every investigator must show a valid warrant, and the suspect must be informed of the reasons for the arrest and his rights. However, in practice, mistakes often occur that have a major impact, both on the victim and on the credibility of the police institution. This is due to a lack of accuracy in the investigation process, where investigators sometimes use inhumane means such as coercion or torture, in violation of human rights principles. Before making an arrest, investigators must have a valid arrest warrant, which provides legality that the action is based on the law and sufficient evidence. Investigators must also have strong preliminary evidence, such as witness testimonies or forensic evidence, to

³ Ardy Sandro Sanombela, “Pertanggungjawaban Terpidana Error In Personasetelah Putusan Berkekuatan Hukum Tetap Ditinjau Dari KUHP UU Nomor 8 Tahun 1981” *Lex Crimen*, Vol 6 No 4 (2017): 54²

⁴ Rahmat Efendy Al Amin Siregar, “Studi Tentang Peradilan Sesat (Rechterlijke Dwaling) Dan Hubungannya Dengan Memudarnya Kepercayaan Masyarakat Terhadap Hukum” *FITRAH*, Vol 8 No 1 (2014): 17

⁵ Harley Jananta Helmi, Rachmat Ihya, “Peranan Rekonstruksi Pada Proses Penyidikan Dalam Upaya Mengungkap Kejahatan” *IMTIZ: Jurnal Ilmu Keislaman*, Vol 7 No 1 (2023): 129

⁶ Vika Dwi Arisma, dkk, “Perlindungan Hukum Bagi Korban Salah Tangkap Dalam Kasus Pembunuhan Perspektif Hukum Pidana” *Hakim: Jurnal Hukum*, Vol 5 No 2 (2024): 182

⁷ Russel Covey, “Police Misconduct as a Cause of Wrongful Convictions” *Washington University Law Review*, Vol 90 No 4 (2013): 1133

support the designation of a person as a suspect.⁸ In addition, investigations must be conducted in a transparent manner, where suspects are informed of the reasons for their arrest, their rights, and are guaranteed access to a lawyer. Investigators must also adhere to human rights principles and avoid the use of force or coercion during the investigation process.

In order to minimize the risk of wrongful arrest, the use of technology and scientific methods, such as DNA and fingerprint analysis, is necessary to enable more accurate identification of suspects, so that errors such as error in persona can be avoided. Wrongful arrest cases not only have a negative impact on victims, who often experience deep psychological trauma such as anxiety and depression, but also create social stigma that damages their reputation. In addition, victims often face the material loss of having to defend themselves legally, while their income is reduced due to the lengthy legal process. In this context, the Police Professional Code of Ethics stipulated in National Police Chief Regulation No. Pol: 7/2006 requires every member of the National Police to act in accordance with norms of professionalism and ethics, including carrying out investigation and arrest duties fairly and accurately.⁹ The appropriate use of scientific technology not only assists investigators in making careful decisions, but is also in line with the principles in the code of conduct, which avoids harming innocent individuals. Failure to adhere to the code of conduct and use appropriate technology can damage the image of the police and exacerbate the impact on victims, making it important for investigators to always maintain integrity and professionalism in carrying out their duties.¹⁰

From an institutional perspective, wrongful arrests can destroy public trust in the police. The inability of the legal apparatus to work accurately fuels public distrust of the justice system and can lead to sharp criticism regarding alleged human rights violations. Accuracy in the legal process is therefore crucial to ensure that there are no human rights violations, as well as to maintain public confidence in a fair and transparent legal system. Mistakes in handling cases not only cause suffering to innocent individuals, but also undermine the integrity of the legal system as a whole. Wrongful arrest is a serious problem that not only inflicts physical, psychological and social suffering on victims, but also undermines the credibility and integrity of law enforcement institutions. The inability of investigators to carry out their duties carefully and in accordance with legal procedures, as stipulated in the Criminal Procedure Code, can result in fatal mistakes that lead to human rights violations. With the development of technology and scientific methods in investigations, there needs to be special attention to the accuracy and professionalism of investigators in identifying suspects to prevent errors in persona.

METHOD

⁸ Mas Benny Mika Dorma Saragih, "Kewajiban Penyidik Menghentikan Proses Penyidikan Berdasarkan Putusan Praperadilan Tentang Penetapan Tersangka Yang Tidak Sah dan Tidak Berkekuatan Hukum" *Legis: Jurnal Konsep Ilmu Hukum*, Vol 4 No 1 (2024): 24

⁹ Yanius Rajalahu, "Penyelesaian Pelanggaran Kode Etik Profesi Oleh Kepolisian Republik Indonesia" *Lex Crimen*, Vol 2 No 2 (2013) 8143

¹⁰ Andrea Nevada Daeng, dkk, "Penegakan Kode Etik Polisi Terhadap Pengaruh Citra Institusi Kepolisian" *Borobudur Law and Society Journal*, Vol 3 No 2 (2024): 68-78

²⁸ This research uses normative juridical research methods. ³³ Normative juridical research is research based on the ³¹ study of applicable legal norms, in the form of laws, doctrines, and court decisions. The purpose of normative juridical research is to understand, analyze, and provide interpretations of applicable legal provisions ²² related to the responsibility of investigators in cases of wrongful arrest. The data used in this research is secondary data. Secondary data is data that is not obtained directly from the field, but ⁵⁷ through library research. In this case, the data used consists of:

- a. **Primary Legal Materials:** Laws, regulations, and court decisions that are relevant to the issues studied.
- b. **Secondary Legal Materials:** Legal literature, scientific journals, textbooks, and academic documents related to the concept of investigator liability and studies on error in persona or wrongful arrest.
- c. **Tertiary Legal Materials:** Encyclo²⁹dias, legal dictionaries, and other reference materials that help explain primary and secondary legal materials.

Data collection techniques in this research are literature study ³⁸ and document study. Literature study is conducted by searching and reviewing reading sources, such as law books, scientific articles, and related laws and regulations. In addition, document studies are conducted by studying relevant legal documents, such as court decisions and previous research results relating to the responsibility of investigators in cases of wrongful arrest. The data that has been collected will be analyzed qualitatively. Qualitative analysis techniques are carried out by examining theoretical data, both from primary, secondary and tertiary legal materials. Data processing is done manually by organizing relevant data to obtain a comprehensive understanding of the legal responsibility of investigators in cases of error in persona (wrongful arrest). This analysis is directed at providing appropriate explanations and interpretations based on legal theories and judges' considerations in imposing criminal decisions related to cases of wrongful arrest..

RESULT AND DISCUSSION

Error in persona is a legal term that refers to an error in the identity of the perpetrator of a crime. ²³ Here a person who is not the perpetrator of the crime is arrested, investigated, or even tried and sentenced for a crime he did not commit. In the law enforcement process, especially at the investigation stage, this error often occurs due to errors in evidence collection, misinterpretation of facts, or lack of accuracy of investigators in identifying the actual perpetrator.¹¹ The investigation process is a crucial early stage in the criminal justice system.¹² This is where the police, as investigators, investigate the alleged crime and gather relevant evidence to identify the perpetrator. However, in many cases, misidentification may occur, either due to limited resources, pressure to solve the case, or even due to inaccurate information from witnesses or third parties. Such errors in investigation can lead to errors in persona, which have significant

¹¹ Selvi Yulianti, "Pertanggungjawaban Pidana Terhadap Pelaku Tindak Pidana Pemilu Legislatif Tahun 2014 (Studi Putusan N^o 70/Pid./2014/Pt.Tjk.)" *Fiat Justitia*, Vol 10 Issue 1 (2016): 1-220

¹² Firdaus Pasue, "Kewenangan Polisi Selaku Penyidik Dalam Melaksanakan Upaya Paksa Pengegeledahan Dalam Pasal 32-37 KuHP" *Lex et Societatis*, Vol 5 No 5 (2017): 167

legal and ethical implications.¹³ Mistakes in arresting and processing someone who is not a criminal have very serious repercussions, especially from a legal perspective.

Error in persona is a serious violation of human rights, particularly the right to liberty and the right to justice. When an innocent person is arrested and tried, their right to a fair trial and the right to be protected from arbitrary arrest is violated.¹⁴ In this context, the Constitution of the Republic of Indonesia, in particular Article 28D of the 1945 Constitution, affirms that everyone is entitled to recognition, guarantees, protection and certainty of a just law and equal treatment before the law. Furthermore, a person who has been wrongfully arrested not only suffers physical or mental harm due to detention, but also material harm due to loss of employment, income, and possible career damage. In addition, immaterial losses also occur in the form of stress, trauma, and prolonged psychological pressure. The reputation of the wrongly arrested individual can be severely damaged, even if he or she is eventually cleared of all charges.¹⁵ In the eyes of the public, a person who has been arrested will still be perceived as a criminal, even after an acquittal.¹⁶ This impacts on the social life of the individual, who may lose the trust of their neighborhood, family or colleagues.

In Indonesia, a person who is a victim of wrongful arrest or wrongful conviction has the right to seek redress through available legal mechanisms. Under KUHAP (Kitab Undang-Undang Hukum Acara Pidana), specifically Article 95, a person who has been detained or convicted but later acquitted or released from all charges has the right to apply for compensation and rehabilitation of his or her good name. Indonesian criminal law explicitly regulates the rights of individuals and the responsibilities of investigators in the legal process, including in the context of errors in persona. Some of the relevant rules include:

- a. **Article 18 of the Criminal Procedure Code** stipulates that arrests can only be made based on a warrant and must be carried out in accordance with legal procedures. If this procedure is violated or an arrest is made against the wrong person, then the action can be considered a violation of the law.
- b. **Article 95 of KUHAP** gives victims of wrongful arrest the right to claim compensation and rehabilitation. This compensation includes compensation for material and immaterial losses suffered by the victim due to the wrongful legal process carried out by the investigator.
- c. **Article 77 of KUHAP** also opens the opportunity for a person who is a victim of wrongful arrest to file a pretrial to test the validity of the arrest, detention, or confiscation carried out by law enforcement officials.
- d. **Article 13 of Law No. 2 of 2002** states that one of the duties of the police is to maintain public security and order, enforce the law, and provide protection,

¹³ Hilmiatul Lutfia, dkk, "Perlindungan Hak-Hak Tersangka Error In Persona Dalam Tahap Penyidikan" Vol 29 No 1 (2023): 6733-6750

¹⁴ Nancy Glorya Luntungan, dkk, "Asas Praduga Tak Bersalah Dalam Hukum Pidana : Refleksi Hak Asasi Manusia" *Juris Humanity*, Vol 2 No 2 (2023): 63-76

¹⁵ Hidayat Andyanto, "Pertanggungjawaban Penyidik Terhadap Terjadinya Salah Tangkap" *Jendela Hukum*, Vol 5 No 2 (2018): 57

¹⁶ Kurnianas, dkk, "Rehabilitasi Terhadap Terdakwa Yang Mendapatkan Putusan Bebas" *Solusi*, Vol 20 No 2 (2022): 259

protection, and services to the public. In carrying out this duty, investigators must ensure that every law enforcement action, including arrests, is carried out carefully and based on accurate evidence.

- e. **Article 15 Paragraph (1) Letter a of Law No. 2 Year 2002** authorizes the police to arrest suspects of criminal acts. However, this authority must be exercised with caution and must not violate the principles of law and human rights.
- f. **Article 19 Paragraph (2) of Law No. 2 of 2002** stipulates that every action taken by the police, including arrests, must be in accordance with applicable law and respect basic human rights. In the event of an error in persona, the police can be held liable if there is evidence of negligence in carrying out the procedure.

The prevention of errors in persona requires reforms and improvements in the law enforcement and investigation systems.¹⁷ One of the key measures is capacity building of investigators through regular training and competency building in investigations, use of modern technology, and respect for human rights. Investigators must have sufficient skills to ensure that identification of perpetrators is done precisely and accurately without error.¹⁸ In addition, transparency in the legal process is also very important, especially in the arrest and investigation stages. The involvement of relevant parties, such as suspects and families, in monitoring the legal process can help reduce the risk of errors in persona. Furthermore, the use of advanced technology such as DNA analysis, fingerprints, and CCTV footage will increase the accuracy of identifying criminal offenders and minimize the possibility of wrongful arrest.¹⁹ By implementing these steps, it is hoped that errors in persona can be minimized so that justice can be better served.

The responsibility of investigators to prevent errors in persona is fundamental to a fair and accountable justice system. In carrying out their duties, investigators are required to adhere to standard procedures set out in the Criminal Procedure Code (KUHP) and other regulations. These procedures include steps such as ensuring there is sufficient preliminary valid and relevant evidence before making an arrest. The investigation process must be conducted based on the precautionary principle and prioritize human rights, which means that every arrest must be based on a valid warrant, except in urgent circumstances such as an arrest caught red-handed (in flagrante delicto) as stipulated in Article 18 of KUHP. Investigators must also ensure that the suspect's identity is accurately verified through appropriate methods, such as clarification from witnesses, documentary evidence, and the use of modern investigative technology. In the event of a wrongful arrest, the impact not only leads to damage to the reputation and freedom of the wrongfully arrested individual, but also has significant legal consequences for the investigator, including criminal charges, administrative sanctions, as well as potential claims for damages provided for in Article 95 of the Criminal Procedure Code.

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¹⁷ Yuniar Kurniawaty, "Konsep Keadilan Terhadap Vonis Peradilan Sesat: Tinjauan Hukum" *Jurnal Legislasi Indonesia*, Vol 14 No 4 (2017): 395-406

¹⁸ Verencia Pricilia Ponto, dkk, "Efektivitas Hukum Penggunaan Cctv Sebagai Alat Bukti Dalam Penegakan Hukum Tindak Pidana Pencurian Di Kota Gorontalo" *Unisan Law Review*, Vol 1 No 5 (2024): 1-15

¹⁹ Bayu Budi Prasetyo, B. B. P. (2023). *Perspektif Hak Asasi Manusia Dalam Pengungkapan Pembunuhan Menggunakan Identifikasi Sidik Jari* (Doctoral Dissertation, Upt. Perpustakaan Undaris).

In addition, these errors can undermine public trust in the police institution, which can undermine social stability and the legitimacy of the law itself.

Under these conditions, errors in suspect identification can become more frequent, especially when investigators are working under political, social or institutional pressure to produce the results of an investigation quickly. These errors not only reflect procedural failures, but also demonstrate investigators' weak capacity to manage their workload and lack of access to more sophisticated investigative technologies. As a preventive measure, improved training for investigators is crucial. This training should include not only more sophisticated investigative techniques, but also an in-depth understanding of human rights and the ethical implications of investigators' actions. Investigators need to be equipped with the ability to use modern investigative technologies, such as DNA analysis, fingerprint scanning, and CCTV footage that can strengthen the accuracy of perpetrator identification. These more advanced forensic technologies can significantly reduce the possibility of false arrest as they provide more objective and accurate data.²⁰ However, although technology is an important factor in improving the accuracy of investigations, technology alone is not enough without a strict internal control system within the police institution. Investigators' accountability must be maintained through transparent and objective oversight mechanisms, both from within the institution (internal) and from outside (external). Internal oversight can take the form of regular audits of the investigation process and evaluation of investigators' performance based on their adherence to standard procedures.²¹ External oversight, for example through the role of an independent oversight commission or the pretrial system, is also important to ensure that the rights of suspects are maintained and there is no abuse of power. In this context, Articles 77 to 83 of KUHAP provide space for individuals to challenge the lawfulness of arrest or detention through the pretrial mechanism. This provides a guarantee that investigators' actions can be legally tested by aggrieved parties, strengthening the accountability of the investigation process.

The moral and ethical responsibility of investigators should also be part of the effort to prevent wrongful arrest. Investigators must understand that every action they take has the potential to significantly affect a person's life, both legally and socially. Errors in investigation, especially those that lead to wrongful arrest, not only affect the victim, but also worsen the reputation of law enforcement institutions and create a crisis of public confidence in legal justice. Therefore, a culture of accountability must be instilled in every stage of the investigation, where investigators must always be ready to take responsibility for every decision they make. If investigators make mistakes, there should be a clear and firm sanction mechanism, both administratively and legally, to ensure that misconduct is not repeated in the future. In addition, in addressing the issue of wrongful arrest, it is important to develop a more independent oversight system for investigators. Currently, oversight mechanisms for investigators are often under the control of the police institution itself, which can lead to conflicts of interest. Truly independent oversight, for example through an external body free from the influence of

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²⁰ Jeanne Asteria Wawolangi, "Manfaat Forensik" *BIP's JURNAL BISNIS PERSPEKTIF*, Vol 7 No 2 (2015): 154-170

²¹ Sakti, A. (2010). *Peranan Metode Pemeriksaan Dokumen Dalam Audit Investigatif Untuk Mengungkap Adanya Kasus Korupsi (Studi Kasus Pada Polda Jabar)* (Doctoral Dissertation, Universitas Widyatama).

the police institution, would provide more objective and transparent oversight. With stronger oversight, any indications of irregularities in the investigation process can be immediately identified and corrected, thus preventing wrongful arrests.

CONCLUSION

Identification errors in Indonesian law enforcement, known as errors in persona, have a significant impact on both victims and the integrity of the legal system. These errors often result from inaccuracies in the investigation process, pressure to quickly resolve cases, and the lack of utilization of modern technology in suspect identification. In a legal context, investigators have the responsibility to follow the procedures set out in the Criminal Procedure Code (KUHP) and ensure that every arrest is based on strong and valid evidence. The importance of accuracy in the legal process is expected to prevent human rights violations, restore public trust in the police institution, and create a fairer and more transparent justice system. Reform efforts in investigations, including continuous training for investigators and the use of more sophisticated technology, are needed to minimize the risk of identification errors and ensure justice for all parties.

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