



The criminal procedure Law's revitalization of restitution right for the acquitted accused

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Abstract

Indonesian Criminal Procedure Act (KUHAP), which is founded on the principle of upholding human rights, a citizen who has had their rights taken away by law enforcement is entitled to receive compensation as outlined in Article 95 (1) of the Act. This provision allows a dismissed accused individual to seek compensation if they have been arrested, detained, prosecuted, or tried, provided that there is evidence of misconduct related to their person or the application of the law. Normative jurisprudence refers to the legal framework based on written laws and regulations, or the notion of law as a standard for acceptable human conduct. This paper aims to elucidate the legal process of reviving the claim for damages for individuals who have been acquitted. The conclusion that can be drawn from the above arguments is that the problem can be addressed by implementing the Supreme Court Regulations (PERMA). This approach requires judges to regulate the affirmation that the law applies to the examination of claims for damages when the accused is dismissed before trial. It also ensures that torture is swiftly addressed, losses are proven using a simple and formal approach, damages are calculated uniformly and fairly, and the opposition party is definitively withdrawn as the subject.

Keywords: Revitalization, criminal procedure law, restitution right, accused, acquittal

Introduction

The Constitution has stipulated that the State of the United Republic of Indonesia provides guarantees of legal protection to all its citizens as a consequence of a rule of law (*Rechtsaat*). This means that all citizens are protected by the state from all crimes that threaten the life, property, and honor of every citizen of its country. To guarantee this, the State, through its law enforcement system, has a set of instruments of authority to restrict the rights of its citizens for the sole purpose of enforcing the law as an attempt to eradicate crime and ultimately maintain social stability in society.

One of the powers of the law enforcement apparatus is forced detention. A person who is suspected of committing a criminal offense may be subject to detention, i.e. forced placement of a person within a certain period to restrict his or her space of movement. In practice, detention is carried out in a prisoner's home or elsewhere by placing them in a closed cell. The purpose of this detention is to facilitate law enforcement processes in anticipation of alleged criminal offenses of escape, removal of evidence, influencing witnesses, or committing new offenses.

Under the provisions of the Criminal Procedure Law Act Number 8, 1981 (hereinafter referred to as the KUHAP), detention may be carried out at each level of investigation, from investigation to prosecution, trial in the first instance, appeal to cassation. Under KUHAP (State Legal Record of the Republic of Indonesia Number 76, T.L.N No. 3258, Article 1 verse 21, each level of examination may be extended according to its needs and have different time limits as described in the following table:

Table 1: Duration of Detention Periode

No	Levels	Detention	Extended
1	Investigation	20 Days	40 Days
2	Accusation	20 Days	30 Days
3	Trial	30 Days	60 Days
4	Appeal	30 Days	60 Days
5	Cassation	50 Days	60 Days

In addition to the period of detention described above, in certain cases and under special circumstances, an additional detention of 30 (thirty) days may be extended with an extension of 30 (thirty) days applicable to each level of investigation. If the entire time of this detention is accumulated from the investigation to the case law attempt, a person could potentially be detained for up to 700 (seven hundred) days.

This restriction of the right to detention has no significant implications if, through a court ruling, the criminal case against him ends in a conviction. Because the length of time spent in detention is counted as a reduction in the time of sentence. The problem arises when it turns out a court ruling ends in the release of the accused from a criminal charge. The grounds for this release can be various the accused is not the actual criminal, the judge is not convinced by the evidence presented to the public prosecutor that the defendant is a criminal, or the crime accused against him is not a criminal.

A defendant who has received a release sentence and has undergone detention has suffered material and intangible losses which are sometimes invaluable. A popular example of the loss as a consequence of this detention is the loss of the right to work and income. The work already undertaken as a livelihood must be stopped because it has to be locked up in a prison cell. Similarly, if the accused is working as an employee in the private sector or the state, the goods must lose their income because they do not enter the office within a certain period. Even in extreme circumstances, it could end in redundancy. Another right that has been deprived is the opportunity to meet and be surrounded by loved ones. In certain cases, when he is a student, the learning process must be stopped, and the opportunity to pursue science is lost. It may be getting worse because he was defamed to be an accused in the trial.

KUHAP is established based on respect for human rights, and stipulates that a citizen who has been deprived of his

rights in the name of law enforcement has the right to a form of damages regulated by Article 95, paragraph (1): "A suspect, accused or defendant shall be entitled to claim damages for arrest, detention, prosecution, and trial or other proceedings, without any reason based on the law or for misconduct concerning his person or the law applied"

The provision opens the possibility for a convicted defendant to file a claim for damages if he or she has been arrested, detained, prosecuted, or tried as long as there are elements of misconduct concerning his or her person or the law applicable. The phrase "confusion about people" is a form of error of the justice system in bringing a person to trial. Such a situation in the world of practice is called error in persona or disqualification in person. Another situation that exempts a person from prosecution is when it turns out that the evidence presented in the trial proceedings does not sufficiently convince the Chamber of Judges that a person is proven to have committed the offense accused of him.

Yahya Harahap asserts that an accused who has been declared free of charges can mean that the accused has been prosecuted and tried without a legal basis. The release decision is the basis for the accused to file a claim for damages because it has been prosecuted and tried without the basis of the Act under Article 95 of the KUHAP^[1]. According to J.D. Michels, the State as a law enforcement authority should have been responsible for the losses suffered by someone accused of committing a criminal offense, moreover, forced detention attempts have been made^[2].

According to data in the Supreme Court's Directory of Judgments website, between 2019 and 2020, there were at least 836 (eight hundred thirty-six) judgments that exempted the accused from criminal charges. To find out how the implementation of Article 95 paragraph (1) of the Covenant, can look at how its implemented through a court ruling. Therefore, preliminary research has been carried out as a basis for the determination of the problem in the writing of this thesis by identifying the court judgment that has the subject matter of the "former" Prosecutor who, based on a decision of legal force remains has been declared free from any legal claims (hereinafter called the Acquitted) that submit a claim for damages due to having undergone the period of detention or even compensation as a consequence of having undertaken criminal proceedings.

Based on the preliminary research, in 10 years (2010-2020) only 63 (sixty-three) court rulings were found in which the Acquitted filed claims for damages. This is a very small amount when compared to the number of exemptions that the Court makes every year.

Research Method

The type of research that is used is normative jurisprudence, normative juridical research is a law conceived as what is written in the rules of laws (law in books) or law conceived as a rule or norm that is a standard of human behavior that is considered appropriate.^[3]

The study of normative law includes research into the rule of law, research into legal systematics, and research into levels of synchronization of law^[4]. The approaches used in this study are the statute approach and the case approach. Where this research will compare the rules of the laws governing the compensation of the accused dismissed or released (law in books) with their application in court decisions (law in action)^[5].

Results and Discussions

The Criminal Procedure Law's Revitalization of Restitution Right for the Acquitted Accused

Revitalization comes from the word "vital" which means very important. While Revitalization itself means a process, a way, an act of revitalizing or reinvigorating. The revitalizing context in the writing of this thesis is to revive a law of events that is in force but does not or has not run as desired by the legislators. Not so far, the purpose of this revitalization is to refine the legal structure of the event and adapt it to the current legal conditions.

The law of the event which is the object of revitalization in the writing of this thesis concerns the examination of claims for damages for the Prosecutor who is dismissed by the Court under Article 95 paragraph (1) of the Code. Therefore, it will be further about the forms of efforts that can be undertaken to revitalize the laws in the case of the claim of damages. The revitalization forms presented in this writing are based on the findings of the results of research based on court judgment practice. The importance of carrying out this form of revitalization is to revive the legal norms of damages claims that had previously been regulated by the state. In the end, it gives legal certainty to the accused who has been released to obtain his rights as guaranteed by the Constitution.

Pretrial Mechanism as a Tool to Obtain Compensation due to Acquittal Decision (Article 95 (1) KUHAP).

Referring to the provisions of the law, the legal mechanism of the event used to examine claims for damages is supposed to be pre-trial. However, on the part of the Acquitted, the majority of damages claims are brought to courts using civil action mechanisms. It should be, when the court finds it by the provisions of the rules of law, that a claim brought in a civil action should be declared rejected or inadmissible, using the miscarriage decision^[6].

The dualism of the orientation of the use of the law of this event then occurred back in the courts. The judge who applies the norm in a court ruling has a different view on enforcing the law in the case of a review of damages claims. Based on the results of research on court rulings, these differences in attitude occur uniformly. In the fifteenth (fourteen) recital of the judgment, the judge considered that the claim for damages filed in civil proceedings should be filed by pre-trial proceeding. Moreover, 2 (two) out of 5 (five) judgments that endorse claims for damages are using civil lawsuits. The phenomenon of inconsistency of these court rulings increasingly affects the uncertainty of what legal mechanisms should be used in examining claims for damages. Eventually, the limit of a claim for damages rejected or accepted becomes more and more fuzzy.

This problem arises from the paradigm that pre-justice is a mechanism of formal examination carried out before the substance is examined by the court. It can be seen from the term used that "pre" means before, and "justice" is the process of examination in court. While claims for damages are made after the criminal investigation is completed, even legal force must be fixed first. This paradigm was then inherent in the judges' thinking that pre-judicial proceedings should not be used to examine claims for damages. Therefore, there is still the view that claims for damages should be examined using civil proceedings.

The inconsistency of the law enforcement of the event has been contrary to the basis of legal certainty. Normative law is when a rule is made and enacted clearly because it

regulates, does not raise doubts (multi-interpretation), and is logical. Obviously in the sense that it becomes a system of norms against other norms so that it does not conflict or cause conflict. Legal certainty refers to the application of a clear, permanent, consistent, and consistent law whose implementation cannot be influenced by circumstances of a subjective nature^[7].

The issue of the conflict between the application of the law of the investigation of claims for damages between judges' judgments and the rules laid down in the Act is also contrary to the theory of adjudication. In the concept of adjudication, a judge is subject to a legal order, the judge being bound by the laws in force. It is further stated that there is no form of law beyond the rules in force. In this case, there is a dominance of law or regulation in the making of legal decisions. In the settlement of very severe cases, the provisions of the law must remain a benchmark to be followed by the judge. Common understanding suggests that the theory of adjudication is intended to separate descriptive and normative functions. If they both give accurate descriptions of how the judges decide matters and at the same time try to convey to the judge how they should decide^[8].

Therefore, it is necessary to have a reaffirmation in the rule of law that the investigation of damages claims refers to one law of the event, namely the law of pre-trial events. This provision was then observed and obeyed by all the judges in the Court hence that a certain law was established. The creation of this regulation is a form of revitalization aimed at providing specific legal certainty to the law enforcement of damages claims.

The most effective form of legislative regulation to reaffirm this norm is the PERMA. According to Ni'matul Huda and R. Nazriyah explained that one type of legislative regulation is the regulation of the institution that is binding internally, but in its implementation, many are related to other subjects outside the organization that will be binding when certain legal acts related to the institution, one is PERMA, especially for various regulations concerning legal guidelines^[9].

The PERMA is a rule binding on the interior of the Supreme Court, but if the Court is consistent with its interpretation, it will indirectly help shape the law in society. If it turns out later on that day it is still found that Acquitted has filed a claim for damages using the civil lawsuit mechanism, then as a consequence, the claim will be rejected or declared inadmissible. So it will be a lesson for the people to follow and obey the interpretation^[10].

On the other hand, the PERMA, which is an internal rule, does not require a legislative process that has a fairly long bureaucratic chain. So from a realistic point of view, it's very easy to implement. On the material side, the norms that are to be regulated are not a new law of events that does not require a form of socialization in society. The regulation is but a reaffirmation of a norm in the KUHAP whose primary target is the judges of the state courts, the highest courts, and the Supreme Court.

In addition to the affirmation that the law of the event used is to follow pre-judicial, there can also be formulated rules or foundations which must also follow the laws of the pre-trial event, so that revitalization of the law of the event of the claim for damages can take place in its entirety.

Quick Trial Principle Approach

The foundation of fast justice is universal, that is to say, it relates to the timing of non-delayed settlements. Against this rapid justice, the base is known as the principle of justice delayed justice denied, meaning a slow trial will not give justice to the parties. According to the provisions of Article 82, paragraph (1) (c) of the KUHAP, the principle of prompt trial is the primary principle applied in the examination of pre-trial matters, in which within seven days the judge must have delivered his judgment.

It is also implemented in the case of damages claims. When the legal mechanism of the event used is a civil suit, then this has been contrary to a mandate and a legal order. When examined from the point of view of its utility, the law of pre-trial events has a direct impact on the seeker of justice, because within seven days has been clear whether the claim is dismissed or rejected. And when the law of civil events is applied, then the period granted can reach five months. Not to mention the legal efforts made by parties who feel dissatisfied with the verdict are increasingly prolonging the chain of settlement. But the loss and the destruction have been felt by those who seek justice.

Simple and Formal Evidencing Approach

Based on its characteristics, pre-trial proofing uses a formalist and simple approach. This means that the matters examined in the trial are about the administrative completeness of the process of expropriation and no longer assess matters of a material nature. In the case of the unlawful object of arrest and detention, in practice the proof is carried out by examining whether at the time of arrest or arrest a person was accompanied and issued an arrest warrant and a detention warrant for it. Referring to legal developments when he subsequently entered the suspect's settlement in one of the objects that could be examined in the pre-trial. A person who can be declared a suspect must be based on 2 (two) sufficient initial evidence. In pre-trial proceedings, this sufficient initial evidence is only reviewed from its existence and quantity without considering the quality of the content of such evidence, as a consequence of formal proofing in the law of pre-judicial events.

When the law of the event examination of claims for consequential damages follows the laws of the pre-trial event, then the approach used is formal and simple proof. It is important to consider whether a criminal case that has been undertaken by the Free Council has obtained an independent judgment and has a fixed legal force. To test this, then the evidence made is sufficient by examining the judgment of the matter in question. But to prove the loss that has been suffered can refer to the length of time the prisoners have spent seeking justice. The revitalization that can be done against this is certainty in the proof process. Thus, the convicted Free expects any evidence that should be presented to the trial.

1. A Uniform and Fair Method of Calculating Losses

Based on the results of the investigation of the judgments admitting claims for damages, it is generally known that the judge/judiciary uses a different approach in determining the damages to be reimbursed by the state, as illustrated in the table below:

Table 2: Calculation of Damages based on a Judgment Granting the Claim For Damages To Acquittal Accused

No	The Acquitted	Loss Measures	Approved Damages
1	Oman Abdurrohman (13/Pdt.G/2010/PN SGU)	Losses resulting from gunshot injuries and resulting defects	IDR.200.000.000,-
		Material losses loss of employment loss	IDR.22.000.000,-
2	Muji Burrahman (1/Pid.Pra/2019 PN Kbu)	income loss	IDR.30.000.000,-
3	Sarinus dan Thomas (2/Pid.Pra/2020/PN Sky)	loss of assets	IDR.400.000.000,-
		Losses as a result of criminal offences from investigation to pursuit of punishment	IDR.502.000.000,-
		Moral losses	IDR.1.000.000.000,-
4	Yoseph Moruk (1800/K/PDT/2014)	Reimbursement of customary fines paid	Rp.6.000.000,-
		Recovery of good name	IDR.5.000.000,-
5	Sri Mulyati (49/PID/2013/PT SMG)	Replacement of losses by the State	IDR.5.000.000,-
		Refund of fines paid	IDR.2.000.000,-

Based on the data in the table above, it can be concluded that there is no definite benchmark for the judge in determining the losses to be reimbursed by the State. For example, in the case of claims for damages of an intangible nature. In the case of Sarinus and Thomas, the immaterial losses adjudicated by the court amounted to IDR. 1,000,000,000,- (one million rupiah). Meanwhile, in the other three cases, immaterial losses were not considered at all by the Judge/Judge-in-Chief.

Besides, in the case of intangible losses, uncertainty in the calculation of actual losses also occurs. In the case of Oman Abdurrohman and Muji Burrahman, the loss of income was obtained as a component of the calculation of losses, i.e. each earned IDR.22,000,000,- and IDR.30,000,000,-. This very significant disparity creates legal uncertainty as to whether intangible losses can be the basis for the dismissal of claims for damages. On the other hand, it is not certain that the law applied would cause injustice to the Free Movement.

The form of revitalization that can be done in this matter is the definitive provision of any forms of damages that can be accepted in the claim for damages for an accused who has been released. Whether it is limited to material losses or it covers intangible losses. Besides, it is necessary to regulate how such a loss is accounted for. The affliction shall a free man suffer, that he may know the greatest of the smallest in exchange for his loss.

2. Regulation on Subjects Retaken as Definitely Oppositional

In the civil litigation law regime, the determination of the defendant in a lawsuit is one of the vital aspects. Error attracting a responsible subject may affect the declaration of an inadmissible claim on the grounds of lack of party (*plurium lists consortium*). On the other hand, if the subject attracted turns out to have no capacity to be held responsible, then the claim can be rejected based on an error determining the party. (error in persona).

Such a civil law regime also occurs in the context of claims for damages under Article 95 (1) of the KUHAP. In practice, based on court decisions, the party withdrawn is generally the subject carrying out the detention against him, namely the Police or the Prosecutor's Office. In fact, according to some judges, the two subjects are not sufficiently representative of the impact of the losses suffered by justice seekers. Some judges think that the Ministry of Finance should be withdrawn as an opposition party or at least withdraw as a part of the Prosecutor. Such consideration emerged as a consequence of paying

compensation for the loss was the state through the Finance Minister.

An error in determining the party to the dispute contributes to the rejection or declaration of inadmissibility of a claim for damages. Such serious consequences, rather, do not coincide with the consistency of a court ruling that applies different provisions. For instance, in some judgments, it is prohibited for a criminal reporting party to be drawn as an opposition party. In addition, there is a ruling that requires the Ministry of Finance to be withdrawn as a party. This inconsistency increasingly affects the uncertainty of who should be drawn as the opposition. The form of revitalization that can be performed is the affirmation of anyone who can be withdrawn or even prohibited from being pulled as an opposition. Thus, it is a lesson for the Free Minister before him when drawing up a petition to claim damages.

Regardless of how it is implemented in the courts, the court should not focus on purely formal matters, but rather on the losses and suffering that have been experienced by the Liberals as a result of conducting criminal justice proceedings.

Conclusion

An effective solution to address the problem is to implement the PERMA that mandates judges to regulate the process of examining claims for damages in cases where the accused is dismissed pre-trial. This approach involves expediting the justice process, simplifying and formalizing the proof of losses, ensuring uniform and fair calculation of damages, and clearly defining the opposing party. Furthermore, alongside the legal restructuring of the event, it is imperative to undergo a paradigm shift in the mindset of the judge, who must exhibit impartiality while adjudicating claims for damages on behalf of the acquitted individual.

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