THE ARREST OF ERROR IN PERSONA BY INVESTIGATORS (POLICE): A REVIEW OF LEGAL LIABILITY IN THE PERSPECTIVE OF POSITIVE LAW IN INDONESIA

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Abstract: The problem of wrongly arrested by investigator in this case the police is still interesting thing to be studied. This is related with the provision of wrongly arrested by the police in occurrence of Error in Persona in Indonesia and the accountability of police investigator in case of Error in Persona according to the regulations in Indonesia. This research uses a normative juridical approach. Normative research is conducted on the theoretical matters of the principle of law.

Based on the result of research and discussion it can be seen that the provision of the arresting (Error in Persona) by investigators in positive law is regulated in the law no. 48 of 2009 about Judicial Power. The accountability of investigator against the occurrence of wrongly arrested of error in persona under the Criminal Procedure Code (KUHP), divided into two ; Material Responsibility, and Immaterial Responsibility.

Based on the explanation above then the author’s suggestion is : regulations should contain a strict sanction for investigators (police) in order not to wrong victim catch; and an amendment of Law. No 2 of 2002 about Indonesian National Police shall be made, to affirm the wrongly arrest by the investigator (police) is part of the conception of violation.

Keywords: error in persona, police, legal liability, positive law

I. INTRODUCTION

The problem of wrongly arrested by investigator in this case the police is still interesting thing to be studied. This is related with the provision of wrongly arrested by the police in occurrence of Error in Persona in Indonesia and the accountability of police investigator in case of Error in Persona according to the regulations in Indonesia.

The growth of populations occurring in developing countries such as in Indonesia tends to complicate the issues of practices of crime. This is for the sake of state becomes more conducive, safe, controlled from things that can harm society.

It shows that every citizen has the right to be treated as human being especially from the Police of Republic Indonesia (referred as POLRI) as the law enforcement agencies in Indonesia.

Seen from the regulations, the article 13 Law no. 2 of 2002 on Police of the Republic of Indonesia regulates the POLRI duties are:
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1. Have a duty to maintain security and public order
2. Uphold the law
3. Provide protection, shelter, and service to the citizen
4. Investigate and investigate all criminal acts under the KUHP and Laws and regulations.

The police of the republic of Indonesia as one of institutions of the administration of duties and functions of government to carrying out its duties and functions must be based on the legitimacy of the applicable laws. Where the main functions of police is to uphold the law and serve the interests of citizen. So it can be said that police duty is to prevent the crime and provide protection to the citizen.

The term police, in Indonesian Dictionary is a matter of the Police or anything that is with the police. In Law no. 2 of 2002 about Police of the Republic of Indonesia the functions and police institutions based on the regulations in article 2, the function of police is one of the function of government in maintaining security and public order.

From the term above everything that relating to the functions and organs of the police in implementing one of the function of government in maintaining security and public order. Police in formal sense includes an explanation about organization of the position of the police institution while the police in sense provide the answer to the problems of duty and authority in order to face the danger and obstacles of security and order both the framework of the police authority and the provisions regulated in Laws and Regulations specially for police.

Based on the explanation above, there are several consideration become the basis of the problem formulation in this study, those are:
1. What is the provision of wrongly arrested by the police in the occurrence of error in persona in Indonesia?
2. What is accountability of the police investigator in the case error in persona according to the Laws and Regulations in Indonesia?

II. METHOD

The kind of research that will be used in this study is normative research consisting of data of legal material, first data of the primary law, namely Law of the Republic of Indonesia no 2 of 2002 about the Police of the Republic of Indonesia, Code of Ethics of the Indonesian Police, Criminal Code and the Criminal Procedure Code.

Second, the secondary law material is explanation and regulations used as primary law material, literature books or readings that explain the Police of the Republic of Indonesia, the result of the research that relate to the case of error in persona, the opinion of the experts who are competent with the research.

Third, tertiary law material are biographies, library catalogs, dictionaries, and reading list. Therefore, data analysis method adopted by the research is qualitative descriptive method.

III. RESULT

3.1 Provision of Wrongly Arrested (Error in Persona) in Positive Law

The process of investigation as regulated in KUHAP. As arranged in Law no. 2 of 2002 in Article 2 of Law Number 2 of 2002 about the Police of the Republic of Indonesia, “The
function of the Police is one of the functions of government in maintaining security and public order, law enforcement, protection, and service to the citizen.”

The provisions regulating for victims of wrongly arrested can be found in the law No. 48 of 2009 on Judicial Power in Article 9 paragraph 1 states that:

1. Anyone who is arrested, detained, prosecuted or tried without reason based on law or by mistake concerning the person or the law thereof, have the right to claim compensation and rehabilitation.
2. Official deliberately commits acts as referred to in paragraph (1) shall be liable in accordance with the provisions of regulations.”

Provisions in Pre-Judiciary. The meaning of pretrial in criminal procedure law can be understood from the article 1 point 10 of the Criminal Procedure Code (KUHAP) stating that the Pretrial is the authority of the court to examine and decide:

a. The legality of an arrest and or detention, at the request of the suspect or his family or any interested petition for the sake of law and justice;
b. Whether or not the suspension of an investigation or suspension of prosecution of a lawful request for the enforcement of law and justice and;
c. Request for compensation or rehabilitation by the suspect or his family or any other party or proxy whose case is not brought to court.

In general, the pretrial is regulated in article 77 to article 88 of the Criminal Procedure Code (KUHP). In addition, there are other articles that are still relate with the pretrial but stipulated in a separate article that is 12 about compensation and rehabilitation as regulated in articles 95 and 97 of the Criminal Procedure Code (KUHP).

The specific pretrial authority corresponding to articles 77 to Article 88 of the Criminal Procedure Code (KUHP) is to examine the legality of arrest or detention and to verify whether or not termination of investigation or cessation of prosecution, but is related to 95 and 97 of the Criminal Procedure Code (KUHP) of Pretrial Authority plus the authority to examine and decide on compensation and rehabilitation.

Protection of Witnesses and Victims in Law Number 13 of 2006 Article 7 paragraph 3 explains that “Further provisions about the granting of compensation and restitution are regulated in a Government Regulation that is through Government Regulation no. 44 of 2008. Article 4 of this Government Regulation states that the application for compensation shall at least contain:

a. The identity of the applicant;
b. Event description of gross violations of Human Rights;
c. The identity of the person of gross violations of human rights;
d. Description of the real losses suffered, and;
e. Requested compensation form.

Then the provisions of paragraph (2) mention that the application must be enclosed:

a. A photocopy of the identity of the Victim approved by the competent authority;
b. Proof of harm suffered by the Victim or the Family created or authorized by the competent authority;
c. Proof of payment incurred during the treatment and / or treatment authorized by the agency or the party doing treatment or treatment;
The quick and fast Police behavior so to be less careful through selfish way for the completion of investigative tasks can end quickly, this is what makes the negligence of investigators in the process of investigation, so that human rights are ignored causing in the arrest of an innocent person, which of course can harm the related parties, and not maintain and uphold the dignity of the state, especially the Police itself. This is as regulated in Government Regulation Number 2 of 2003.

The wrongly arrested or Error in Persona is a negligence investigator in the criminal process in which the criminal process in the process of arrest conducted by the investigator. So that in this case can be resolved through pretrial institutions. Investigators sometimes handle cases that are still unclear in the description of the identity of the perpetrators in doing the task, for the Police as an investigator sometimes difficult to find a solution in the process of investigation.

POLRI’s errors in doing arrests include to disciplinary violations or Violations of the Code of Ethics of the Police Professional of the Republic of Indonesia. Errors in doing arrests can be due to negligence of investigators in the duty, abuse of authority in making arrests or in the process of investigation, and the negligence of police members in doing their duties so as disobeying in disciplinary rules of Police members. Police mistakes in making arrests may also occur, due to incompatibilities in performing the steps of arresting procedures in doing their duties.

Article 1 Paragraph 1 about the definition of violation is an act done by a member of the Indonesian National Police for violating Member’s oath/pledge, official oath/pledge, Disciplinary Regulations and Code of Ethics of the Police of the Republic of Indonesia. The Enforcement of the Code of Professional Ethics in article 11 paragraph 2, the form of responsibility made by the police is divided into 2 namely:

1. Material responsibility, it is the limited and openly sanction of the apology statement, so for a limited apology done by the violator directly both oral and written to the party harmed by
the offender. While a open apology is an apology and regret indirectly through the mass media to a party that has been harmed by the offender.

2. The immaterial responsibility, it is about sanction in the form of obligation of re-guidance in Institute of Police Education that is if the violator has been proven legally violated Code of Ethics of Police State of the Republic of Indonesia twice or more.

Besides the reinstatement, sanctioned offenders are no longer eligible to carry out the police profession is an offender which according to the Commission Ethics Commission Ethics Council of the Republic of Indonesia is no longer fit to carry out the police duties as regulated in articles 14, 15 and 16 of Law No.2 of 2002 on the Police of the Republic of Indonesia. And for that reason, based on the suggestion and consideration of the Chairman of the Commission of Ethics of the Commission of the Republic of Indonesia of the Republic of Indonesia, the offender may be subject to administrative sanctions (mutation and demotion), dismissal sanction with respect, or disrespectful discharge sanction.

3.2 Accountability Investigator Police in Indonesia

Wrongly arrested or Error in Persona is a negligence investigator in the criminal process in which the criminal process is in terms of the process of arrest conducted by the investigator. So this case can be resolved through pretrial institutions. Investigators sometimes handle cases that are still unclear in the description of the identity of the perpetrators in doing the task, for the Police as an investigator sometimes difficult to find a solution in the process of investigation.

The law consequences in the case of error in persona should not only be for the victim who is the victim of the wrongly arrested but should be to fulfill the sense of justice in the community should also be the responsibility of the police investigators themselves.

The Law responsibility of law enforcers in this case is the Police of the Republic of Indonesia refers to the provisions in the regulations on the Police is in Law No. 2 of 2002 on the Police of the Republic of Indonesia. The contents of this Law regulate the functions, duties and authorities of members of the Police of the Republic of Indonesia as law enforcement.

Based on the case previously described, it is clear that there is an element of negligence from the police investigators who are not professionals handling a criminal case. Because to conduct arrest the investigator must really pay attention to the provisions or rule of law. There are conditions that must be met by investigators when they want to arrest according to Article 17 of KUHAP, namely:

a. A suspect who allegedly committed a crime.
b. The strong allegations should be based on the beginning of sufficient evidence.

Sufficiently referred to in Article 17 is a proof of the beginning to suspect a criminal offense. Furthermore, in the explanation of article 17 also shows that the arrest cannot be arbitrary but only intended for those who really commit a crime.

Sanctions which may be granted in the wrongly arrested may be given to the investigator as an administrative sanction of disciplinary violation and violation of the professional code of ethics of duty as a deterrent effect on his actions, and for the victim to be compensated or rehabilitated. It is a form of responsibility by the investigator for having done the negligence that caused the loss to the victim.
From the sanctions above, can be concluded that error in persona is not a crime. Violations by the Police may be given sanctions as regulated in Government Regulation Number 1 of 2002 on Dismissal of Police Officers.

In Article 1 Paragraph 1 about the definition of violation is an act committed by members of the Indonesian National Police for violating the oath / pledge of members, oath / pledge of office, Disciplinary Rules and / or Code of Ethics of the Police Professional of the Republic of Indonesia. The Enforcement of the Code of Professional Ethics in article 11 paragraph 2, the form of responsibility made by the police is divided into 2, those are:

1. Material responsibility, it is the limited and openly sanction of the apology statement, so for a limited apology done by the violator directly both oral and written to the party harmed by the offender. While a open apology is an apology and regret indirectly through the mass media to a party that has been harmed by the offender.

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Administrative (mutation and demotion), sanction of dismissal with respect, or dismissal sanctions with disrespect. Sanctions of dismissal with disrespect shall be the heaviest form of sanction and may only be imposed if in view of the session of the Commission of Ethics Commission of the Republic of Indonesia the violations committed by violators is very serious and defames the credibility of the Police Institution of the Republic of Indonesia.

Further regulation on the dismissal of members of the Police Member of the Republic of Indonesia regulated in Government Regulation No. 1 of 2003 on Dismissal of Members of the Police of the Republic of Indonesia. In article 11 of Government Regulation No. 1 of 2003, there are several reasons for dismissal with disrespect:

1. For committing a crime
2. For committing an offense
3. For leaving the task or something else.

In article 13 PP No.1 of 2003 on the Dismissal of Members of the Police of the Republic of Indonesia, “Members of the Police of the Republic of Indonesia may be dismissed with disrespect from the Police Institution of the Republic of Indonesia for violating the oath or promise of members of the Police, oath or promise of office and Code of Ethics Profession of the Police of the Republic of Indonesia” disrespectful dismissal can be held after the session of the Commission of Ethics Committee of the Republic of Indonesia. POLRI Leaders should not
tolerate irregularities committed by their members. Leaders do not cover up subordinate faults by looking for various justification reasons.

IV. CONCLUSION
Based on the results and discussions by the author, the researchers took a conclusion that:
1. The provision of the arrest (error in persona) conducted by the Investigator in Positive law is stipulated in Act No. 48 of 2009 on Judicial Power.
2. The accountability of the investigator against the occurrence of misconduct or error in persona under the Criminal Procedure Code, divided into 2, namely Material Responsibility, and Immortality Responsibility.

REFERENCES
Books

Regulations
Law No.2 of 2002 on the Indonesian National Police Government Regulation Number 1 Year 2002 on Dismissal of Police Officers
Law Number 8 Year 1981 regarding Criminal Procedure Law, Law Number 39 Year 1999 on Human Rights, Law Number 26 Year 2000 on Human Rights Court.
Law Number 13 Year 2006 concerning Protection of Witness and Victim of Law Number 40 Year 2009 regarding Judicial Power.