



## Suspects' Rights to Demand Compensation for Unlawful Detention at Cirebon Police Station

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**Abstract:** Law enforcement is one of the efforts to achieve or create order, security, and tranquility in society, both as an effort to prevent and eradicate or enforce a violation of the law. *Criminal offense* is a term derived from the Dutch translation of *strafbaarfeit*. The word *strafbaarfeit* was later translated into various languages in Indonesian. Some words used to translate *strafbaarfeit* by scholars in Indonesia include criminal acts, delicacies, and criminal acts. The type of research the author uses is descriptive writing, which provides data that is as thorough as possible about humans, conditions, or other symptoms. The point is to reinforce the hypothesis to help strengthen the old theory or within the framework of compiling new theories. The results of this study showed that in 2017, there was one pretrial application, and the judge's decision showed that it was not granted, while in 2018, there was no pretrial application. In 2019, there were also no pretrial applications, while in 2020, there were two pretrial applications, and the judge's decision showed that one pretrial application was granted and one was not. Implementing the fulfillment of the rights of suspects demanding compensation for unlawful detention in Cirebon Regency has not been optimal.

**Keywords:** Law, Suspects, Detention, Indemnity, Cirebon Police

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### INTRODUCTION

Every suspect, defendant, or convicted person has the right to protection from the State, including protection if he becomes a victim in the criminal justice process that is made an arrest, detention, search, or seizure that is not by legal procedures by law enforcement officials, or there has been an incorrect application of the law so that the accused is released and has permanent legal force or there is a mistake about people. One form of protection for violations of the human rights of suspects, defendants, and convicts by law enforcement officials is by providing compensation, the need to provide legal protection to victims.

Law enforcement is one of the efforts to achieve or create order, security, and tranquility in society, both as an effort to prevent and eradicate or enforce a violation of the law. Suppose the law that has become the legal basis for the steps and actions of law enforcement officials is different from the basis of state philosophy and the outlook on life of the Indonesian nation. In that case, law enforcement will automatically fail to achieve its target. The rule of law requires

that laws be enforced, meaning that they must be respected and obeyed by everyone, citizens and the government. The rule of law cannot be separated from the goal of creating public order, security, justice, and welfare in public and State life.

The Code of Criminal Procedure (KUHAP), as a law enforcement procedure aimed at maintaining material law (criminal law) in the philosopher's judgment, affirms "that the Indonesian state as a state of law based on Pancasila and the 1945 Constitution upholds human rights and guarantees all citizens togetherness and their position in law and government and is obliged to uphold the law and government without exception." This indicates that the purpose or essence of the criminal procedural law that intersects with the enforcement of human rights against perpetrators of criminal acts is contained in the Criminal Procedure Code. This unprofessionalism can be seen in the number of cases that need more action.

This can be seen, and suspects must confess to something they did not do. The law is no longer a tool to seek justice but merely to find fault; if there is no common thread to connect someone as a target to a suspect, it is torn apart against the other side, which is a forced relationship. So, it is not surprising that a misguided trial occurred then. This is also an open secret; the law is often bought and sold. This is what causes the law to be engineered. The moral aspect is good on the issue of law enforcement officers' insensitivity to the community's sense of justice. Recent cases show how much societal justice is being torn apart.

## **LITERATURE**

*Criminal offense* is a term derived from the Dutch translation of strafbaarfeit. The word strafbaarfeit was later translated into various languages in Indonesian. Some words used to translate strafbaarfeit by scholars in Indonesia include criminal, delict, and criminal acts. According to P.A.F. Lamintang regarding the crime, "The framer of the law did not explain as to what exactly is meant by "strafbaarfeit," so there arise in the doctrine of various opinions about what exactly is meant by "strawboard feit."

From the many views on what term is most appropriate for "strawboard feit," the framers of the law finally stated that the suitable term for "strawboard feit" is a criminal offense. The underlying reason for this is the socio-juridical aspect, where almost all criminal legislation uses the term criminal act. Two views are known about understanding criminal acts, namely the monistic and dualistic views. The monistic view provides that criminal acts/acts already included prohibited acts and criminal liability/guilt. While in a dualistic view, it gives the view that there

are only prohibited acts in criminal acts, and criminal responsibility/guilt is not an element of criminal acts (Tongat, 2011, pp. 105-106).

The scholar who adheres to monism is Simons; according to Simons, quoted in his book, P.A.F. Lamintang is meant by criminal acts that have been committed intentionally or unintentionally by a person who can be held accountable for his actions and which by law has been declared a punishable act". Based on this understanding, the elements that must be met for the existence of a criminal act are:

- Human acts, both in the sense of positive deeds (doing) and negative deeds (not doing).
- Threatened with crime
- Against the law
- Done by mistake
- By a person who is able to take responsibility

A criminal act that meets the delict formula is unlawful and is committed with a mistake. Meanwhile, Wiryono Prodjodikoro believes that a criminal act is an act whose perpetrators can be punished. The scholar who adheres to dualism is Moeljatno; according to him, what is meant by criminal acts is an act that is threatened with a crime, whoever violates the prohibition. Based on this understanding, the elements that must be met for the existence of a criminal act are:

- The existence of (human) deeds;
- Which meets the formulation in the law (this is a formal requirement, related to the enactment of Article 1 paragraph (1) of the Criminal Code;
- Unlawful (this is a material requirement, related to the following of the teaching of material lawlessness in its negative function).

In addition to Moeljatno, other scholars who are classified as adhering to the dualism view in positive law *staftbaarfeit* are none other than *feit* (acts) that are threatened criminally in the provisions of the law. In positive law, the nature of unlawfulness and guilt is not an absolute condition for the existence of a criminal act". If we look carefully, there are similarities in the views of monism and dualism. Both monism and dualism require that for a crime, there must be a criminal act and criminal responsibility. The difference has been explained in the previous explanation.

### **Elements of Criminal Action**

An act can be considered a criminal offense if it has fulfilled or matched all the elements formulated as a criminal act. If one of the elements of the crime is not met, then the prosecution process advanced by the public prosecutor to the judge for trial cannot continue or is null and void. That is, a person can only be held criminally responsible for his actions if the act has fulfilled all elements of the criminal act as formulated in the criminal law articles.

The existence of a criminal act is also a reason for the state to exercise its right to enforce criminal law through its equipment, such as Police prosecutors. Prosecutors prosecute or impose a crime against someone accused of a criminal act, both an active act (doing something) and a passive act (ignoring or not doing something). Meanwhile, according to E.Y. Kanter and S.R. Sianturi, the crime has 5 (five) elements namely:

- Subject;
- Error;
- Unlawful in an act;
- An act prohibited or required by law and for violation of which is punishable with a crime;
- Time, place, and circumstances (other objective elements).

While legal experts formulate the elements of criminal acts as follows; Threatened with criminal punishment by law;

- Contrary to the law;
- Committed by a guilty person;
- The person is seen as responsible for his actions.

If an act can be called a criminal act, then the act must meet 5 (five) elements, as follows:

- There must be a behavior (gedraging);
- The conduct should be in accordance with the legal description (wetterlijke omschrijving);
- That behavior is a behavior without rights (against the law);
- The conduct can be weighted (responsible) to the perpetrator;
- The behavior was threatened with criminality.

To get an idea of the five elements mentioned above so that a person's behavior or actions can be called a criminal offense, the following is quoted from a criminal formula that can be described as Article 362 of the Criminal Code, which reads: "Whoever takes something, which wholly or partly belongs to another person, with the intention of unlawful possession, is threatened with theft, with a maximum imprisonment of five years or a maximum fine of nine hundred rupiahs."

Elements of the criminal action described in Article 362 of the MPH, as follows:

- Whosoever;
- Take;
- An item;
- Part or all belongs to someone else;
- With intent to possess the item unlawfully.

If a person's actions have fulfilled the elements of a criminal act formulated in Article 362 of the Criminal Code mentioned above, then that person can be held criminally responsible for theft. However, if one element of the crime is not fulfilled, it will have a different meaning and purpose.

#### **Division of Elements of Criminal Acts**

It is well known that a person can only be sentenced if the act matches all the elements of the criminal act formulated in the criminal law articles. It is a normative guideline that must be fulfilled when a person can be blamed for committing a criminal act; the act must be proven to match all elements. If one of the elements of the criminal act is not fulfilled or cannot be proven, then the consequence is that the criminal act alleged against the perpetrator is not proven, and the charges can be null and void. In practice, the normative view in its development has shifted, where someone can be blamed for committing a criminal act based on values that live in society or customary laws that are generally unwritten.

#### **METHOD**

The research method aims to study one or several symptoms, by analyzing them and by conducting an in-depth examination of these facts, to then seek a solution to the problems caused by these facts. The type of research used by the author is descriptive writing, which is to provide data that is as thorough as possible about humans, conditions or other symptoms. The point is to reinforce hypotheses, in order to help strengthen old theories, or within the framework of

compiling new theories. The reasons for using descriptive research to provide an image, painting, and explain everything real related to the conviction of elderly criminal offenders.

**Research Approach**

The type of approach that the author uses is empirical juridical, where the juridical approach is carried out on problems from the perspective of laws and regulations, while the empirical approach is used to approach problems from aspects of legal practice at the Cirebon Police Station.

**DISCUSSION**

**Implementation of the Fulfillment of the Rights of Suspects Demanding Compensation for Unlawful Detention**

If a person is subject to detention or other acts (search, seizure, termination, investigation, and termination of prosecution) and the suspect considers the act invalid or does not meet certain conditions in the law. The suspect, family, or other authorized parties, such as legal counsel/advocates, may request a pretrial hearing. The suspect can file charges for Pretrial indemnity if such actions are invalid. Pretrial application data were obtained based on research conducted at the Sumber District Court:

**Table 1. Pretrial Application Register at Source District Court Year 2017-20211**

No	Year	Pretrial Requests	Judge's Decision		Information
			Granted	Rejected	
1	2017	-	1	1	
2	2018	-			
3	2019	-			
4	2020	2	1	1	
5	2021	1	-	-	Report Revoked Before Trial
Sum		4	2	2	

The table above shows that 2017 there was one pretrial application, and the judge's decision showed that it was not granted, while in 2018, there was no pretrial application. In 2019, there were also no pretrial applications, while in 2020, there were two pretrial applications, and the judge's decision showed that one pretrial application was granted and one was not. In 2021, only one pretrial application and report were withdrawn before trial. Based on the table above,

during the last five years, from 2017 to 2021, one pretrial application was granted, two rejected, and one out-of-court verdict. Only a few lawsuits were entered from 2017 to 2021, namely, four pretrial applications. From the total number of pretrial applications over the past five years listed in the table above, the author classifies requests for state compensation for suspects who have experienced unlawful detention by law enforcement officials. The following data were obtained based on the results of research conducted at the Source District Court:

**Table 2. Register of Requests for Indemnity for Suspects Subjected to Unlawful Detention in Source District Court Year 2017-2021**

No	Year	Request for Indemnity	Judge's Decision	
			Granted	Rejected
1	2017	-	-	-
2	2018	-	-	-
3	2019	-	-	-
4	2020	1	1	-
5	2021	-	-	-
Sum		1	1	-

The table above shows that in 2017, there were no requests for compensation; in 2018, there were no requests for compensation. In 2019, there were no requests for compensation, while in 2020, there was one request for compensation, and the judge's decision showed that the request for compensation was granted. Finally, in 2021, there were no requests for compensation. From the table above, it can be concluded that from 2017 to 2021, there was only one request for compensation against the state for suspects who suffered unlawful detention, and the judge's decision stated that the application was granted.

Wahyuki et al. submitted this request for compensation. By the judge's decision, who sentenced the Respondent to pay compensation for errors in making arrests and detentions in the amount of Rp. 1,000,000 (one million rupiah) because he felt aggrieved for the detention that was considered unlawful, carried out by the Source Police, and the request was granted. The author also interviewed Dedyanto Wong, who had filed for pretrial but retracted his report; the case against him was about the confiscation of goods, namely Fireworks, which, according to the confession of police officers The fireworks sold had high explosive power, so they were confiscated. However, the victim, in this case, felt innocent. A confiscation warrant by the Court does not accompany confiscation. Victims feel aggrieved, so they take legal action.

While researching communities in Cirebon Regency, the authors collected data by distributing questionnaires to people who had experienced forced efforts (detention, arrest,

confiscation, and search) and those who were temporarily detained. Based on the results of a questionnaire of 26 community respondents who had experienced coercive measures (detention, arrest, seizure, and search) by law enforcement officials, it can be described as follows:

**Table 3. Communities That Have Been Subjected to Coercive Measures By Law Enforcement Officials**

No	Implementation of Indemnification	Answer	
		Yes	No
1	Have experienced detention by the Police	26	
2	Have been detained by a public prosecutor	21	5
3	Have experienced detention by a judge	21	5
4	When you are about to be arrested, an arrest warrant is shown that includes your name	11	15
5	When you are about to be arrested, a warrant is shown stating the name of the police officer assigned to arrest you	11	15
6	When you are about to be detained, the police officer assigned to detain you delivers a copy of the arrest warrant to your family	11	15
7	Police conduct searches and confiscation of items in your home	13	13
8	The seized items relate to the crime you committed	10	3
9	A search and seizure warrant from the District Court is shown	9	4
10	At the time of the search, witnessed by 2 witnesses or witnessed by the village head / ward head	9	4
11	Knowing the existence of a state's damages against a suspect when subjected to a forced attempt by law enforcement authorities that is not in accordance with the rules of law.	6	21
12	During the legal process, you are accompanied by legal counsel/advocates	5	21

The table above shows that of the 26 respondents of Sumber Regency who had experienced coercive efforts by law enforcement officials, fifteen admitted that they did not get an arrest warrant at the time of arrest. Fifteen former suspects admitted that at the time of detention, the police officer assigned to detain him did not deliver a copy of the arrest warrant to his family. During the act of coercive efforts in search and seizure, thirteen former suspects were subject to search and seizure actions by police officers, and at the time of the search and seizure of goods at the former suspect's home,

The four former suspects were not shown a search and seizure warrant from the Chief Justice of Sumber District Court, and the four former suspects claimed that at the time of the search and seizure, it was not witnessed by two witnesses or the village head/ward head. In addition, the table above shows that out of 26 respondents, 20 were not aware of any compensation from the state if subjected to unlawful coercive measures by law enforcement officials. Only six respondents knew about this, and only five were accompanied by legal counsel/advocates during the legal process. In addition, I also conducted research at the Class IA

Detention Center in Cirebon City, based on the results of a questionnaire on 30 respondents of the Sumber Regency community who were temporarily serving a period of detention in the Class IA Detention Center in Cirebon City, which can be described as follows:

**Table 4. People Temporarily Serving Detention Periods**

No	Implementation of Indemnification	Answer	
		Yes	No
1	At the time of your arrest you are shown an arrest warrant stating your name	7	23
2	When you are about to be arrested, you are shown a letter of duty that includes the name of the police officer assigned to arrest you	7	23
3	When you are about to be detained, the police officer assigned to detain you delivers a copy of the arrest warrant to your family	7	23
4	Police conduct searches and confiscation of items in your home	13	17
5	Goods seized in connection with crimes you committed	13	
6	A search and seizure warrant was shown from the Chief Justice of Sumber District Court	-	13
7	At the time of the search, it was witnessed by two witnesses or witnessed by the village head/ward head	-	13
8	Knowing the existence of damages from the state to the suspect when subjected to an act of unlawful forced effort by law enforcement that is not in accordance with the rules of law	6	24
9	You are accompanied by an advisor law/advokat	7	23

The table above shows that of the 30 respondents of Sumber Regency who were temporarily serving the Class IA Detention Center detention period in Cirebon City, 23 admitted that at the time of their arrest by the police, they did not get an arrest warrant. Twenty-three suspects admitted that at the time of detention, the police officer assigned to detain him did not submit a copy of the arrest warrant to his family. As for the act of coercive efforts in terms of search and seizure, 13 suspects confessed that at the time of the search and seizure at the suspect's house, there was no search and seizure warrant from the Chief Justice, and 13 suspects confessed that at the time of the search and seizure was carried out without two witnesses or witnessed by the village head/ward head.

The table also shows that out of 30 respondents, six suspects knew about compensation from the state if they were subjected to unlawful coercive acts by law enforcement officials. In contrast, the other 24 suspects did not know this. Seven suspects were accompanied by counsel/advocates, and 23 other suspects did not receive legal counsel / advocate assistance. The author will discuss a case that has occurred in one of the victims wrongly arrested by the police, namely Faisal. According to this victim's confession, the chronology of the incident was that when the victim was on his way home, the victim at that time was walking and again saw a drug

party raid.

In this case, the victim was very shocked because he was taken to the police station as well eve, even though he felt innocent. The victim was so aggrieved that she took a urine test to prove her innocence. At the time of the arrest, it was made without being shown an arrest warrant. The victim felt aggrieved, but in her confession, she did not apply for compensation because she did not know the law, so she did not claim compensation. In addition to Faisal's incident, there are still several former suspects who have experienced unlawful coercive acts by the police, including Basse, Fuji, Sudarmono, and Baim, who have each been arrested but without being shown an arrest warrant.

Based on the results of the questionnaire, the reason they did not file a compensation claim was that they were unaware of any compensation and did not want to prolong the problem, considering that the victim did not have a legal representative who understood the matter. From the results of questionnaires on the people of Sumber Regency who have been subjected to forced efforts by law enforcement officials and against people who are still serving detention periods in the Cirebon Regency Detention Center, it can be concluded that there are forced efforts carried out by law enforcement officials in Cirebon Regency besides that the people of Cirebon Regency are very few who know of compensation from the state if they are subjected to forced efforts by law enforcement officials.

### **Suspects' Obstacles in Seeking Damages for Unlawful Detention**

In this case, the right of suspects to get compensation already has rules. Many ordinary people still do not know their rights, and many also know them. However, they choose not to use these rights because it takes a long process, and the community also wants to avoid dealing with the law anymore and reasons that the results obtained are not worth the process. Several obstacles are faced by suspects subject to unlawful detention by law enforcement officials to obtain compensation from the state:

a. The constraint of ignorance

Currently, most people in Sumber Regency do not know about compensation if they are subject to unlawful detention by law enforcement officials and there are also people who already know about it, but do not know where to complain / report and how the process to get compensation.

b. Cultural constraints

Basically, people who have experienced unlawful detention in Cirebon Regency,

choose not to claim compensation because they only choose the family path because in Cirebon Regency there is still a thick traditional culture of someone and also feel grateful when they are free from detention. In addition, they do not demand compensation because they do not want to prolong the problem anymore because they think that law enforcement officers are also ordinary people just like us.

c. Constraints of governing laws

In this case, the law in question is a written regulation that is generally accepted and made by the central or regional government. In this case, compensation, the Criminal Procedure Code has regulated the rights of suspects not proven guilty and sentenced to acquittal or release from all lawsuits by the court. They have the right to claim compensation. The Criminal Procedure Code has also been supplemented by Government Regulation No. 27 of 1983 concerning the Implementation of the Criminal Procedure Code (later amended by Government Regulation No. 58 of 2010 concerning amendments to Government Regulation No. 27 of 1983 concerning the Implementation of the Criminal Procedure Code) and supplemented by the Regulation of the Minister of Finance of the Republic of Indonesia No. 983 / KMK.01 / 1983 which regulates the process of payment of compensation.

If observed by the regulation, obtaining compensation requires a long process because the applicant has to wait for the completeness of the file, which, of course, takes a long time, is convoluted, and requires a lot of money. So, it still needs to reflect the speedy, low-cost, simple trial principle.

d. Psychological constraints

Based on the results of a questionnaire with one of the victims arrested by the Source Police, namely Basse. Currently, the people of Cirebon Regency lack trust in law enforcement officials, especially ordinary people whose education level is still low, and he also thinks that only people with money will get justice; this stigma of thinking affects the community so that more people do not want to have anything to do with the court, especially in demanding compensation, it will only prolong the problem of wasting time because even if suing will not be granted. That is why ordinary people feel justice is only for people with money.

e. Constraints on facilities or facilities that support law enforcement

The author, in this case, quotes the opinion of Soerdjono Soekamto, who stated:

With certain facilities, law enforcement can take place smoothly; these facilities include educated and skilled human personnel, sufficient finances, and so on. In terms of fulfilling compensation for suspects subject to unlawful detention by law enforcement, qualified human

resources, funds, and good organizational governance are needed to support law enforcement.

## CONCLUSION

The author's conclusions are based on the discussion in the previous chapters, namely:

1. Implementing the fulfillment of the rights of suspects who claim compensation for unlawful detention in Cirebon Regency has not been optimal. Based on the results of research conducted on the people of Pinrang Regency, the people of Cirebon Regency need to learn more about compensation to the state. In this case, the community does not understand the law regarding compensation for unlawful detention in Cirebon Regency.
2. The obstacles faced in fulfilling the rights of suspects to unlawful detention in Cirebon Regency are:
  - a. Cultural constraints
  - b. The constraint of ignorance
  - c. Constraints of governing laws
  - d. Constraints on facilities or facilities that support law enforcement
  - e. Obstacles in court proceedings
  - f. Political constraints.

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