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## RESEARCH ARTICLE

# LEGAL PROTECTION FOR THE VICTIM OF ERROR IN PERSONA UNDER THE CRIMINAL JUSTICE PROCESS

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## Abstract

This Research is aimed to know and understand the legal protection for the victim of *error in persona* in criminal justice process, and to know the legal responsibility of the legal officers for handling the case of *error in persona*. This research is done in East Java, Jombang Regency, with consideration that in that region have the victims of *error in persona* (Legal Subject whom subjected of criminal sentenced but not a perpetrator) in a criminal justice process. Approach that used in this research is legal sociologis approach with empirical normative types. The character of research are deskriptive and qualitative. It combined to get supported eachother in defined the legal protection for victims of *error in persona* in criminal justice process, while as normative determined that what should be managed by the the law in order to have a legal protection for the victims. The result of this research have shown that the legal protection for the victims of *error in persona* in criminal justice process can't implemented. especially regarding to the right of compensation, the right of rehabilitation, the right of medical assistance, the right of counseling and the right of legal assistance. The responsibility of legal officer that handling the cases of *error in persona*, like giving sanction and obliged to give rehabilitation and compensation are not fully implemented yet. So it is recommended to give sanction as a legal consequences.

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## Introduction

Law is one of media to create the general welfare. Due to it reason, Law must be fair and enforced justice. The uncertain Law will against with the essence of law itself so need to be changes in order to reach the goal. The purpose of the law would be achieved if the law meets sense of justice as well as useful for the community and certainly to protect the people

The weaknesses of criminal court in Indonesia opened the space for the official staff like police, public prosecutor, judge to abuse their authority. In Criminal Justice system, the regulation to protect the victim against errors in persona (victim sentenced but who are legally not the actor) due to errors in the criminal justice process, leads to the main obligations through the State Criminal Code into line with a real purpose, which is to realize and ensure the truth according to the humanity (Anonim., 2013).

Error in persona, is ironic Law that happen in Indonesia and not just a new one. It happens often in the world of justice. Many innocent people because of un professional of the legal officers so they were arrested detained and judge then put in jail. Due to Error in Persona, on the case of Karta and Sengkon. They were sentenced by the Court of Bekasi, basically just a sentiment and prejudice. Both of them were un guilty but have bad experienced in the past. So their community environment put them as suspected, as murdered of Sulaeman. The witnesses who have prejudiced also conered them with wrong testimony and the judges became victim of the

suggestion from the witness. What would be happen if the real murder< Gunel have not accidentally told his relatives. Gunel feel guilty to them and confessed his guilty and made the case it reviewed (Moster, 1983).

Some of similar cases like Sengkon and Karta who must stayed in jail for 7 years and 12 years because of convicted have done the murdered while the person was Gunel. The a married couple in Gorontalo enforced to stay in jail due to convicted of killing their daughter but lately found that their daughter is still alive.

Suspected of wrong arrested for 3 defendants are most of the have been convicted to the jail of the murder of Moh.Asrori by detained of Imam Chambali, Maman Sugianto and David Eko Priyanto in First Court of Jombang, add the list of error in persona in Indonesia.

On that case of branch murder suspected by Ryan and at last Ryan recognized that one of his victim was Asrori, then started to miscarriage of justice by the legal officers (Black Law Dictionary, 1999).

The Statements of some people whom are forced to recognized a crime that they didn't do and forced to stay in jail, as long as in the investigating process to get a hard treatment so would recognized as a person to do the crime is a fact that cannot be ignored. The attitude is certainly against with the spirit of developing the white law as announced by the Police of the institution which is respect to Human Rights.

### Problem Analysis

1. How is legal protection for the victim of *error in persona* in criminal justice process?
2. How is the accountability to legal responsibility of the cases of *error in persona* ?

### Purposed of Research

1. To know and understand the legal protection of victim of *error in persona* in criminal justice process;
2. To know the legal responsibility of the legal officers in solving the case of *error in persona*.

### Literature Study

#### a. The Meaning of Legal Protection

The definition of legal protection for people relating to the definition in Dutch literature : "*rechtsbescherming van de burgers tegen de overheid*" while in English literature is "legal protection of the individual in relation to acts of administrative authorities" (Hadjon, 1987).

By the act of government as a central points ( connected with the legal protection), It distinguished into 2 (two) kinds of legal protection for people, like : legal preventive and repressive legal protection. In the addition of repressive legal protection, the medium of preventive legal protection on its developing is much left behind. Moreover, lately more realizing the important thing of the preventive legal protection specially if connected to the "*freies ermesen*" principles.

#### b. Criminal Justice System

Hagan distinguished the definition of antara *criminal justice process* and *criminal justice system*. *Criminal justice process* is each of step from the decision that faced the detained into process that delivered to the criminal convicted for him. While *criminal justice system* is interconnection between the decision that involved in criminal justice process (Hadjon, 1987).

Starting to it purposed, Mardjono mentioned that there are 4 (four) Components in each systems of criminal justice (police, Public Prosecutor, Court and prisons) which is expected to able to cooperate and build an "integrated criminal justice system". If the system integration work is not done, there will be three losses estimated as follows:

1. Difficulty in assessing their own success or failure of each agency, in connection with their duties together;
2. Difficulty in solving the fundamental problems themselves each agency (as a subsystem of the criminal justice system), and
3. Because the responsibilities of each agency are often less clearly divided, so each institution paid little attention to the effectiveness of the overall justice system (Reksodipoetro, 1993).

Human Rights implementation in criminal justice system is become an important problem due to the right of the victims that imposed of guilty but as legal is not the perpetrator that must be protected by the State. The Criminal justice system is a long process and connected to each other, started from earlier investigated, prosecution in the court., judge decision and legal effort until the forced of decision court.

#### c. The Meaning of Victims

According to Arif Gosita, Victim is

Those who suffer from physical and spiritual as a result of the actions of others as opposed to self or others who seek fulfillment of self-interest or otherwise be contrary to the interests of human rights (Gosita, 1993).

Victim is "... whose pain and suffering have been neglected by the state while it spends immense resources to hunt down and punish the offender who responsible for that pain and suffering" (Atmasasmitha, 2012)

Victims is person both individual or collective have suffered on physically and psychology, economic or abused their basic rights trough the wrong act that against criminal Law in each country including abused the power (Muladi, 2005).

According to Law Number 27 year 2004 of Truth and Reconciliation Commission, victim is person both individual or group, both physic and psychology have suffered and lost in economic financial, abused their rights including their heir.

#### **d. Victim in Criminal Justice Process**

The Losses of suffering by victims of a crime not always in material loss or physical suffering, but the greatest effect is the loss or psychological impact. Victim of crime can be keeping overshadowed by the crimes that have happened which is prevent him to indulge in his daily life.

In some cases of crime in Indonesia, often the legal protection is only on material aspects, like the victims have the rights for compensation to the perpetrator with expectation after deliver some compensation the suffering would stop. Moreover, the impact of the crimes is more complex than the compensate of material due to the suffering in both physics and psychology. However, our National Law seemed immunity the legal officer who have done the crime, as example, the investigator who is tortured in investigating by forcing the suspect to conduct what it suspected to him.

### **Research Method**

This research is done in Jombang, East Java. Location selected due to the reason that in that region have a victim as *error in persona* by using the sociology legal with normative empirical type. The selected sample is by using snowball sampling, and interview the representative informant whom familiar with the cases. Data analysis is by qualitative analysis through discussion and legal argumentation.

### **Result and Discussion**

#### **1. Legal Protection for Victim as *Error in Persona* in Criminal Justice Process**

##### **a. The Right to Get Compensation**

Basically, what is required is a material loss and loss (immaterial) due to the errors of convicted. It is the same as the claim for compensation due to the act against the Law. Detained who was released by the decision after PK, have the right for compensation idil, which is suffering due to be arrested, detained, tried for a sentenced in prison. East Java police chief have compensated as much as Rp.50.000.000, 00 (fifty million dollars) to David, Imam, and Maman, due to error in persona. It is first time the Police approving their wrong act and compensated through head of communication of East Java Kombespol Pudji AstutiPudji as represented of the Head of East Java Police Irjen Pol Herman S. Sumawiredja delivered compensation with amount of 50 millions rupiah, divided to, Imam Chambali 20 millions rupiah, David Eko Proyanto 20 millions rupiah and Maman Sugianto 10 million rupiahs. Imam Chambali, David Eko Priyanto and Maman Sugianto didn't get their another compensated due they didn't claim for compensation.

##### **b. The Right to get Rehabilitation**

The Convict who was released by the Supreme Court in the decision of a judicial review, in order to get a rehabilitation is not required to apply for rehabilitation as in demanding compensation. file a request as well as demanding compensation. Due to paragraph (2) of name rehabilitate must put in legal consideration and the ruling of the release. But the victims in persona error, Imam Chambali, David Eko Priyanto and Maman Lewis didn't get any rehabilitation from the State.

##### **c. The Right to Get Counseling**

Indeed, the counseling is provided by counselors to the three victims of error in persona, in order that they can integrated into society as normal as before the case of wrongfully arrested.

#### **d. The Right to Get service/Medical assistants**

Medically, Imam Chambali is still having a head act due to the impact of hit and tortured from the investigator. As same as Maman Sugianto, who have broken jaw, but both of them have not checked up yet to the hospital because of the financial matters.

#### **e. The Rights to Get Legal Assistance**

Although all three victims in persona error were having legal assistance from a lawyer before requested a judicial review, but they didn't directed to a claim for compensation which is their right. According to HR Wiyono (Junior Law Clerk Jombang PN) who accompanied Imam Chambali when met with his lawyer, on the time, Imam had asked about compensation. But his lawyer said that it was not necessary because the lawyer would give him some money. (Interview, March 2, 2013).

### **2. The Responsibility of Legal Officers**

#### **a. Witnesses**

There is no trial by the Code Commission Police, however, some investigators are handling the case of Imam Chambali, Devid Eko Priyanto and Maman Lewis, among others Anang Wahyudi, Mohammad Sian, Bambang Sucipto, Abdul Wahid, Bambang Hermawan, Kartika Djaka, H.Djamaludin awarded sanctions in the form administrative sanctions in the form of mutations, non job, detectives moved from being operational staff, delay of promotion, suspension became an investigator for several years until investigators are not allowed to be forever. Former Police Commissioner Dwi Jombang Setyadi drawn to Police Headquarters. While the former Deputy Chief Commissioner Jombang Rosa Toma Setyawati transferred to the Tourism Police Unit (Polpar) Samapta East Java Police. Former Police of Kasatreskrim Jombang, Bandar Kedungmulyo Former police chief, and former Airport Police Kanitreskrim Kedungmulyo sanctioned over the function. But for Judge and Prosecutors didn't get any sanction.

#### **b. The Obligation to delivered Compensation to the victims or their Heir**

According to Imam Chambali and David parents statements, concluded that it must be fix the procedure of required compensation. Due to the fulfillment of that lost is mentioned in Penal Law of Indonesia which is facultative characteristic, means that to get the right of compensation must be trough the process of required from the applicant. It is not that easy due to get its right they are having difficult time more often.

### **Conclusion**

According to the problem analysis, the result of research and discussion, then concluded, as the following :

1. The legal protection for the victim of *error in persona* case in criminal justice process, have not implemented effectively yet, specially regarding to the right of compensation, the right of rehabilitation, the right to counseling, the right to get medical assistance and the right to get legal assistance. In the sample case of Jombang, the three of victims of the cases of error in persona, Imam Chambali, David Eko Priyanto and Maman Sugianto didn't get their rights as guarantee under the penal law of criminal act.
2. The responsibility of the Legal officers that handling the case that cause of *error in persona*, by get a sanction and obliged to give rehabilitation and compensation do not fully implemented. Sanction imposed to the investigator of it case was only administrative sanction which not give the deterrent effect, Specifically, there was not trial of ethical code of the police to the investigators. While the three victim just got money as charity from the Police of East Java and was not because they demanded to the court for compensation.

### **Suggestions**

1. Need a specific regulation beside the penal law that mentioned about the legal protection of the victim of *error in persona* in criminal justice process especially fulfilling the right to compensate, the right to rehabilitation, the right to counseling, the right to medical assistance and the right to legal assistance. It is important to replace the consequents due to the miscarriage of justice ;
2. In order to give a deterrent effect to the investigator who have make up a false data, ignored the principle of presumption of innocent, and torture the suspect and cause of the *error in persona*, so it necessary to have a ethical code trial by the ethical code of Republic Indonesia Police with not just administrative sanctions in order the give the deterrent effect to the investigators. Apart from that, the investigator have violated the government regulation number 1 year 2003 and demean the credibility of police institution generally. The responsibility like obliged to give compensation must be equal with the lost of the victims although the compensation will not cover the whole loss of victim and able to help the victim to reintegrated into society.

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