



State and Investigator Liability in Wrongful Shooting Compensation through Pretrial with Splitting Cost Scheme

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ABSTRACT

Cases of wrongful shootings by law enforcement officers constitute serious human rights violations within Indonesia's criminal justice system. Although a pretrial mechanism exists to seek compensation, its implementation raises concerns, particularly regarding the imbalance of responsibility between the state and individual investigators. This study aims to examine the legal framework governing compensation for victims of wrongful shootings through pretrial mechanisms and to propose a splitting cost scheme as an alternative model for allocating responsibility. Using normative legal research with doctrinal, statutory, conceptual, sociological, and case approaches, this study analyzes relevant legal norms and pretrial decisions. The findings indicate that the current system places full financial responsibility on the state, without adequately addressing individual accountability of investigators involved in the incident. This condition weakens the principle of personal responsibility in law enforcement practices. The proposed splitting cost scheme offers a proportional distribution of compensation burdens between the state and investigators, based on factors such as individual fault, operational circumstances, and economic capacity. This model not only promotes fairness but also aligns with restorative justice principles. Furthermore, it encourages greater accountability within law enforcement institutions and contributes to the development of a more balanced and responsible criminal justice system in Indonesia.

INTRODUCTION

Criminal procedural law as a formal law is formed by the state, its main function is to enforce criminal law as a material law that can be carried out properly and correctly.¹ In the process of enforcing criminal law, it must be ensured that it does not conflict with other rules or norms. All law enforcement officials such as advocates, police, public prosecutors, and judges in the criminal justice system must run according to the procedures that have been enacted in the criminal procedural law.² The criminal procedure law in force at the time this article was written, namely Law Number 8 of

¹ Joko Sriwidodo, *Pengantar Hukum Acara Pidana*, (Kepel Press, 2023).

² Putri Ayu Dewanti et al., "Sistem Peradilan Pidana dalam Perspektif Hak Asasi Manusia: Analisis terhadap Penyalahgunaan Kekuasaan oleh Aparat Penegak Hukum," *Court Review: Jurnal Penelitian Hukum (e-Issn: 2776-1916)* 5, no. 05 (2025): 113–24.

1981 concerning Criminal Procedure (hereinafter simply referred to as KUHAP) has regulated in such a way that is related to the procedures of the criminal justice system in Indonesia.³

KUHAP is not alone in providing rules of procedure related to the criminal justice system. There are still many derivative rules that are technical in nature to be able to truly provide rules that provide justice, benefits, and legal certainty. However, it seems that even though several laws and regulations have been enacted, there are still problems that have not been resolved properly. For example, in the case of wrongful shooting or wrongful arrest of a suspect.⁴ KUHAP provides a solution in the form of filing a pretrial application for the actions of investigators that are contrary to the law.⁵ Also attached are several legal facts that have been reported in various national news outlets.⁶ Given these legal facts, the concerns raised in this study are no longer mere speculation,⁷ but rather legal issues that require sound and appropriate solutions.⁸ In addition to news reports, there are also several law enforcement officials who have even been prosecuted and brought to trial, as evidenced by judgment No. 44/PID.B/2009/PN.WMN.⁹

The government has demonstrated its commitment by enacting implementing regulations, namely Government Regulation Number 92 of 2015 concerning the Second Amendment to Government Regulation Number 27 of 1983 concerning the Implementation of the Criminal Procedure Code (hereinafter simply referred to as PP 92/2015) which regulates the nominal amount of compensation that can be paid by the state for the actions of the investigator that are contrary to the law. It can be seen in the PP that the amount of compensation is limited by the rupiah currency figure, and the maximum nominal amount that can be paid by the state is fifty million rupiah. Whereas in every year the currency in any country experiences a surge in the increase or decrease in the value of the currency exchange rate. There will always be a possibility this year to buy one portion of meatballs for fifteen thousand rupiah, but next year it will increase to thirty thousand rupiah or even decrease to five thousand rupiah. So this is what is criticized in the existing article along with the solution to the legal problem.¹⁰ This shows that the Criminal Procedure Code and some of its laws and regulations are still unable to provide a perfect solution to all forms of problems in society.

³ Umi Falasifah and Sukinta Bambang Dwi Baskoro, "Tinjauan tentang Pembaharuan KUHAP Sebagai Landasan Bekerjanya Sistem Peradilan Pidana di Indonesia," *Diponegoro Law Journal* 5, no. 3 (2016): 1–11.

⁴ Andiani Oktavia Safitri, "Pertanggung Jawaban Penyidik Kepolisian terhadap Kasus Salah Tangkap," *Dewantara: Jurnal Pendidikan Sosial Humaniora* 3, no. 1 (2024): 246–55.

⁵ Shihaf Ismi Salman Najib and Geofani Lingga Meryadinata, "The Compensation for Victims of Wrongful Shooting through Pretrial and Alternative Solutions in Indonesia," *JUSTISI* 11, no. 2 (2025): 521–41.

⁶ CNN Indonesia, Polda Metro Selidiki Dugaan Polisi Salah Tembak Mati Warga (2018), (<https://www.cnnindonesia.com/nasional/20181105133759-12-344087/polda-metro-selidiki-dugaan-polisi-salah-tembak-mati-warga>, accessed on 31 March 2026).

⁷ Hukumonline, Polisi Salah Tembak Segera Disidang (2013), (<https://www.hukumonline.com/berita/a/polisi-salah-tembak-segera-disidang-lt525fd5636c5c7/>, accessed on 31 March 2026).

⁸ 20DETIK, Briptu Kharisma Dinilai Lalai terkait Tembakan yang Tewaskan Warga Gunungkidul (2023), (<https://20.detik.com/detikupdate/20230516-230516049/briptu-kharisma-dinilai-lalai-terkait-tembakan-yang-tewaskan-warga-gunungkidul> accessed on 31 March 2026).

⁹ Indah Dwi Miftachul Jannah and A Djoko Sumaryanto, "Sanksi Hukum Tindakan Salah Tembak Aparat Kepolisian (Analisis Yuridis Putusan No. 44/PID. B/2009/PN. WMN)," *Judiciary (Jurnal Hukum dan Keadilan)*, 2022.

¹⁰ Najib and Meryadinata, "The Compensation for Victims of Wrongful Shooting through Pretrial and Alternative Solutions in Indonesia."

The legal problem of wrongful shooting due to wrongful arrest of suspects has actually occurred. So that the wrong shooting incident due to the wrong arrest of the suspect is not just a mere concern that exists in the mind of the author's mind. However, this legal problem is already at the stage where preventive and repressive solutions must be found. Some of these solutions have been discussed in previous articles. This article will provide further solutions that are more detailed and as a completion of existing research.

The purpose of this study is to analyze and describe the regulation regarding the provision of compensation to victims of wrongful shootings through pretrial mechanisms in Indonesia and provide solutions in the form of a new concept in the form of *splitting costs* as a form of state responsibility and investigators against victims of wrongful shootings due to wrongful arrest carried out by investigators through pretrial mechanisms. This research has other similar studies related to the discussion of wrongful shooting due to wrongful arrest and pretrial mechanisms in Indonesia and for past studies there are similarities, differences, and *novelty* values when compared to this research, namely, the first research in the form of a thesis with the title *Implementation of Payment of Damages to Victims of Error in Persona in Criminal Cases (Case Study: Case Number 98/Pid.Pra/2016/PN JKT.Sel)* prepared by Della Damayanti.¹¹ The second research is a journal article with the title *Legal Protection for Victims of Wrongful Arrests in Criminal Acts According to the Criminal Procedure Code* prepared by Prasetyo Margono.¹² The third research is a journal article entitled *Legal Sanctions for Wrongful Shootings by Police Officers (Juridical Analysis of Decision No. 44/PID.B/2009/PN.WMN)* prepared by Indah Dwi Miftachul Jannah.¹³ The fourth research is a journal article entitled *The Compensation for Victims of Wrongful Shooting through Pretrial and Alternative Solutions in Indonesia* compiled by Shihaf Ismi Salman Najib and Geofani Lingga Meryadinata.¹⁴ The novelty of this research compared to previous studies is the discussion of a new concept solution in the form of a *splitting cost* scheme of state responsibility and investigators in compensating victims of wrongful shooting through pretrial.

METHODS

This research uses a normative legal method that combines a doctrinal approach and a sociological approach. The normative approach is used to examine and analyze positive legal norms¹⁵ that regulate the responsibility of the state and investigators, especially in the context of compensation for victims of wrongful shootings through pretrial mechanisms. Meanwhile, the sociological approach is intended to examine how these norms are applied in practice, as well as the

¹¹ Della Damayanti, "Pelaksanaan Pemberian Ganti Kerugian terhadap Korban Salah Tangkap (Error in Persona) dalam Perkara Pidana (Studi Kasus: Perkara Nomor 98/Pid. Pra/2016/PN JKT. Sel)" (Fakultas Syariah dan Hukum UIN Syarif Hidayatullah Jakarta).

¹² Prasetyo Margono, "Perlindungan Hukum terhadap Korban Salah Tangkap dalam Tindak Pidana Menurut KUHAP," *Jurnal Independent* 4, no. 1 (2016): 36–47.

¹³ Jannah and Sumaryanto, "Sanksi Hukum Tindakan Salah Tembak Aparat Kepolisian (Analisis Yuridis Putusan No. 44/PID. B/2009/PN. WMN)."

¹⁴ Najib and Meryadinata, "The Compensation for Victims of Wrongful Shooting through Pretrial and Alternative Solutions in Indonesia."

¹⁵ Peter Mahmud Marzuki, "Penelitian Hukum," 2013.

attitude of law enforcement institutions in responding to joint responsibility through the *splitting cost* scheme. A statutory approach is taken to identify relevant rules, including the Criminal Procedure Code (KUHP), the Human Rights Law, and internal regulations of law enforcement agencies. The conceptual approach was used to examine the theory of responsibility, the concept of restorative justice, and the sharing of the burden of responsibility between the state and the authorities.¹⁶ In addition, the case approach is used to analyze pretrial decisions that contain judges' consideration of the losses of victims of wrongful shootings, which is an important basis for the application of the *splitting cost* scheme. Data analysis is conducted qualitatively, by systematically combining the results of normative studies to obtain comprehensive and solutive legal conclusions.

DISCUSSION

Legal Arrangements Regarding the Provision of Compensation to Victims of Wrongful Shootings Through Pretrial Mechanisms in Indonesia

In the event that a person becomes a victim of wrongful shooting by police officers or other security officers, one of the legal steps that can be taken is through pretrial. Pretrial is a legal process conducted before the case is heard in court.¹⁷ In pretrial, the victim has the right to file a claim for compensation related to the losses he or she suffered as a result of the action.

The public's habit of filing claims for compensation in pretrial proceedings is often inseparable from claims for rehabilitation. If we look at the reason, it is certainly rational, because when a person is determined to be a suspect, arrested, and detained, the suspect has automatically soiled his position and good name in his environment because of the prejudices that have befallen him. However, in the context of this discussion, we are only discussing the compensation, given the problems in it.

A claim for compensation in pretrial proceedings is limited to damages arising from a suspect's arrest, detention, prosecution, trial, or other action without statutory grounds or error as to the person or the law applied. The main purpose of this claim is to obtain monetary compensation for losses suffered by the victim as a result of actions deemed unlawful or arbitrary by security forces.¹⁸ In the context of compensation claims through pretrial mechanisms, it is important to clarify the meaning of "*victim*" used in this study. In the classical understanding of criminal justice, victims are generally defined as individuals who suffer harm as a result of criminal acts.¹⁹ However, this definition has evolved within modern victimology, which expands the notion of victims to include those who suffer harm due to abuse of power or errors within the criminal justice process.²⁰

In this study, the individuals concerned are not victims of criminal acts in the conventional

¹⁶ Irwansyah Irwansyah, *Penelitian Hukum: Pilihan Metode & Praktik Penulisan Artikel*, (Yogyakarta: Mirra Buana Media 8, 2020).

¹⁷ Anang Shophan Tornado, *Praperadilan: Sarana Perlindungan Tersangka dalam Sistem Peradilan Pidana Indonesia* (Nusamedia, 2019) p. 12.

¹⁸ Andi Nurul Asmi dan Hambali Thalib, "Hak Ganti Kerugian Korban Penangkapan Tidak Sah dalam Sistem Peradilan Pidana," *Journal of Lex Theory (JLT)*, 1 (2020), p. 99.

¹⁹ Sandra Walklate, "Victimology: The Victim and the Criminal Justice," *System*, 1989.

²⁰ Walklate.

sense, but rather victims of wrongful law enforcement actions, particularly wrongful shooting resulting from mistaken identity (*error in persona*). The harm suffered arises from unlawful or disproportionate coercive measures exercised by state authorities. Therefore, such individuals can be categorized as victims of abuse of power or miscarriage of justice.²¹ This broader interpretation is supported by the United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (1985), which recognizes victims not only as those harmed by criminal acts but also those harmed by violations of human rights by state actors.²²

It should be underlined here that in filing a claim for compensation due to wrongful shooting, the main reason for claiming compensation is not the wrongful shooting, but on the grounds that the arrest was not made on the person (disqualification in person),²³ which means that the person arrested was mistaken and the person concerned has explained that the person arrested was not him. However, he was still arrested and later it was found that there was a mistake in the arrest. Since in the context of this discussion, the person arrested was shot but did not lose his life, the consequences of the wrongful arrest are material and even immaterial losses if the wrongful shooting resulted in a fatal disability.

The pretrial process begins by filing a pretrial application to the District Court in the area where the incident occurred or where the applicant resides. In this regard, it must be emphasized that, under Indonesian criminal procedure law, the legal standing to file a pretrial application is formally attached to the suspect or the party subjected to coercive measures, rather than to a “victim” in the procedural sense.²⁴ However, this position should be understood in line with the broader concept of victim as previously explained. In cases of wrongful arrest and wrongful shooting due to mistaken identity (*error in persona*), the suspect who submits the pretrial application simultaneously occupies a dual position: as a procedural subject within the criminal justice system and as a victim of unlawful law enforcement actions. The losses suffered do not arise from a criminal act, but from errors committed by investigators in exercising their authority.²⁵ Therefore, the term “victim” in this study is used in a substantive sense, referring specifically to victims of abuse of power, while the term “suspect” is maintained in its procedural sense to reflect proper legal standing within pretrial mechanisms.²⁶

After a pre-trial petition is filed, the District Court will conduct an examination of the validity of the arrest or action of law enforcement officers requested by the victim. The court will consider evidence submitted by the victim and law enforcement officials to determine whether the arrest or action is valid or not. If the court concludes that the arrest or action is invalid, then the victim has the right to file a claim for compensation. The decision on this claim for compensation will be determined

²¹ Jonathan Doak, *Victims' Rights, Human Rights and Criminal Justice: Reconceiving the Role of Third Parties*, (Bloomsbury Publishing, 2008).

²² “United Nations, Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power” (1985).

²³ S H M Yahya Harahap, “Pembahasan Permasalahan Dan Penerapan KUHAP Penyidikan dan Penuntutan,” 2019, p. 45.

²⁴ Andi Hamzah, *Hukum Acara Pidana Indonesia*, (Jakarta: Sinar Grafika, 2008).

²⁵ Mardjono Reksodiputro, “Hak Asasi Manusia dalam Sistem Peradilan Pidana, Pusat Pelayanan Keadilan dan Pengabdian Hukum,” (*Lembaga Kriminologi UI Jakarta*, 1994).

²⁶ United Nations, Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power.

by the court based on the available evidence.

However, it is important to remember that pretrial proceedings cannot guarantee that a claim for compensation will be accepted. The final decision remains with the court and depends on the facts. If a claim for compensation is not filed in pre-trial, the victim or their heirs still have the option to file a claim for compensation with the head of the district court in accordance with the civil procedure law. Although this process falls under the jurisdiction of civil courts, it has different requirements and procedures.²⁷ Pre-trial cases will be decided no later than the seventh day after the case has been examined by the court, not after the request for compensation has been submitted to the court in accordance with Article 82 Paragraph (1) Letter c of KUHAP. The same Article and Paragraph (e) also states that if a request for compensation has been filed at the investigation stage and then at the prosecution stage a pre-trial is filed again, it is allowed, as long as it is a different request.

In every case, it is crucial for victims to seek competent legal assistance to understand their rights and the legal process they face. With the right legal assistance, victims can file claims for compensation and fight for the justice they deserve. This information is presented based on general knowledge of the legal process in Indonesia, and it is advisable to consult an experienced lawyer in criminal or civil law for more specific and accurate legal advice. The implementation of compensation payments as a form of fulfillment of claims that require the provision of a sum of money due to arrest, detention, or other actions without justification in accordance with the law or due to errors regarding identity or application of the law, as described in the Criminal Procedure Code (KUHAP). Considering that whatever the actions of the community, as long as it is still within the jurisdiction of Indonesian law, it must still use the Indonesian legal system. The legal system is often referred to as positive law (*ius constitutum/ius positum/ius operatum*),²⁸ referring to the legal regulations that apply at a place and time at the moment.

Indonesia's legal system encompasses both public and private law and the implementation of compensation regulations should prioritize the interests governed by the law, not the interests trying to govern the law itself. It is important to prevent manipulation of the rules for personal gain, and avoid structural victimization based on a statutory provision on compensation. In particular, the sacrifice of the mentally, physically or socially weaker in favor of the stronger or more powerful should be avoided. For example, compensation payments are not made or part of the compensation is withheld.

The regulation regarding the submission of compensation has been regulated in the Criminal Procedure Code, so far it is correct, but unfortunately the regulation of the Criminal Procedure Code still has a lot of empty spaces (*rechtvacuum*) which results in its implementation still not being implemented properly, as evidenced by the fact that there are still victims. Therefore, this study will review the article that regulates the submission of compensation. In deciding whether or not a claim

²⁷ Dimas Tiga Saputra, "Ganti Kerugian dan Rehabilitasi dalam Perkara Pidana" (Skripsi, Universitas Muhammadiyah Magelang, 2017), p. 30.

²⁸ Umar Said Sugiarto, *Pengantar Hukum Indonesia*, (Sinar Grafika, 2021), p. 5.

for compensation is granted, it must be based on the judge's consideration of truth and justice, so that not all claims for compensation will be granted by the judge in the provision of wrongful arrest.²⁹

In addition, Government Regulation of the Republic of Indonesia Number 92 of 2015 concerning the Second Amendment to Government Regulation Number 27 of 1983 concerning the Implementation of the Criminal Procedure Code,³⁰ applies, in practice, wrongful arrest is an offense by the Indonesian National Police (POLRI). A person who is victimized by an investigator can claim compensation for the investigator's mistake, as explained in Article 1 Paragraph 22 of the Criminal Procedure Code, compensation is the right of a person to get fulfillment of his claim in the form of a monetary reward for being arrested, detained, prosecuted or tried without a reason based on law or law applied in the manner regulated in this law.

Wrongful arrest is the implementation of systematic human rights violations and is a very serious crime. Therefore, its handling must be extra ordinary. Victims can also sue law enforcers who wrongfully convict criminally and civilly.³¹ Filing a claim for compensation, in the Criminal Procedure Code the articles that regulate filing a claim for compensation, namely Article 81 and Article 95 Paragraph (2) and Paragraph (3) of the Criminal Procedure Code by linking these two articles, are also associated with Article 77 Letter b of the Criminal Procedure Code. For more clarity, the procedure for filing a claim for compensation will be described as follows:

1. The level of examination of the case at the level of investigation or prosecution.

So if the case does not proceed to trial, meaning that the case only reaches the level of investigation or the prosecution is discontinued perhaps due to insufficient evidence or other means, then the request is addressed to the president of the District Court, in the following manner:

- a. The first step taken is to file a pretrial to determine the validity of the arrest, detention. Once a pretrial decision is obtained, the next step is to seek compensation. Therefore, there is a two-stage process, with the first stage evaluating the legality of the coercive measures and then filing a claim for damages. If the legal action is deemed legal, then a claim for damages cannot be filed or will be rejected. Conversely, if the measure is deemed invalid, the examination process will continue with assessing the amount of compensation that can be received.³²
- b. Secondly, the pretrial process is carried out at the same time to determine whether or not the act of arrest, detention, search, seizure, termination of investigations or prosecution, or other actions that are not based on the law, then after a pretrial determination, a claim for compensation is also made. So only one process is taken, namely the process of simultaneously examining whether or not the action is valid and the claim for compensation so that if the action is valid, the claim for compensation is also rejected; conversely, if it is

²⁹ C V Literasi Nusantara Abadi, "Perlindungan Hukum pada Korban Salah Tangkap," 2023. P. 65.

³⁰ "Peraturan Pemerintah Nomor 92 Tahun 2015 tentang Perubahan Kedua atas Peraturan Pemerintah Nomor 27 Tahun 1983 Tentang Pelaksanaan Kitab Undang-Undang Hukum Acara Pidana," Pub. L. No. 92 (2015).

³¹ Maftuh Effendi, "Tuntutan Ganti Rugi pada Peradilan Administrasi" (2010) 15 Perspektif, p. 412.

³² Saputra, "Ganti Kerugian dan Rehabilitasi dalam Perkara Pidana."

deemed invalid, an assessment of the amount of compensation that can be granted is immediately determined.

2. The level of examination of the case is submitted to the court.

In filing a claim for compensation if the case has been submitted to the court, it is a matter that does not cause problems in the procedure for filing it, if it is related to the provisions of Article 7 Paragraph (1) of Government Regulation Number 92 of 2015 concerning the Second Amendment to Government Regulation Number 27 of 1983 concerning the Implementation of the Criminal Procedure Code and at the same time it is related to the provisions of Article 95 Paragraphs (3) and (4) of the Criminal Procedure Code. For more details, it will be described as follows:

- a. Submitted to the chairman of the District Court authorized to hear the case concerned, so there is no pretrial, but the District Court is authorized to examine decide the compensation claim.
- b. This submission can only be made after a court decision "obtains permanent legal force".³³

After there is a decision in the form of a stipulation, then on the basis of the stipulation the finance department immediately implements payment to the interested party. However, the procedure to fulfill the implementation of payment to the interested party is not so simple, namely the procedure required by Article 10 of Government Regulation Number 92 of 2015 as well as the rules outlined in the Decree of the Minister of Finance of the Republic of Indonesia Number 983/KMK.01/1983 more details will be described as follows:³⁴

1. An excerpt of the determination is given to the applicant within 3 days.

The District Court provides the interested party with a copy of the decision granting the request for compensation. This is done within 3 days from the date of the decision. The provision of copies of the decision on compensation to the applicant has not yet entered the stage of payment implementation, so it is only a notification to him about the granting of the request for compensation. The citation is also given to the public prosecutor, investigator and the Director General of Budget of the local State Treasury Office (KPN);

2. The President of the District Court submits a request for the provision of funds. After there is a decision on the granting of the request for compensation, the head of the District Court who has an active role requests the implementation of the payment;
3. The Director General of the budget issues a Certificate of Authority (SKO) based on the request for issuance of SKO at the expense of the payment and calculation section of the routine state budget;
4. The original SKO is delivered to the rightful party. After the SKO is received by the entitled person, then based on the SKO the applicant immediately submits a request for payment as stipulated in Article 3;
5. Application for payment submission to the local KPN;

³³ Asmi and Thalib, "Hak Ganti Kerugian Korban Penangkapan Tidak Sah dalam Sistem Peradilan Pidana."

³⁴ Saputra, "Ganti Kerugian dan Rehabilitasi dalam Perkara Pidana."

6. The request for payment is made through the head of the District Court;
7. Chief of the District Court forwards the request for payment to the KPN; and
8. Based on the SKO and SPP, the KPN issues the SPM to the entitled party.

Based on Government Regulation No. 92/2015, the government regulates the period of compensation payment. Article 11 states that the payment of compensation is made by the Minister of Finance within a maximum period of 14 working days from the date the application for compensation is received by the Minister. So that the police must be careful and professional in making arrests so that the state does not lose in incurring compensation costs for victims, if there is a wrong arrest. The provisions of Article 10 of Government Regulation of the Republic of Indonesia Number 92 of 2015 are as follows:

1. An excerpt of the decision or determination regarding compensation as referred to in Article 8 shall be given to the applicant within 3 (three) days after the decision is pronounced.
2. An excerpt of the decision or determination on compensation as referred to in paragraph (1) shall be given to the public prosecutor, investigator, and the minister who organizes government affairs in the field of finance. Article 11 as follows:
 - a. Payment of compensation shall be made by the minister who organizes government affairs in the field of finance based on the excerpt of the verdict or court decision as referred to in Article 10.
 - b. Payment of compensation is made within a maximum period of 14 (fourteen) working days from the date the application for compensation is received by the minister who organizes.³⁵

Government Regulation No. 92 of 2015 sets forth various compensation amounts available to victims, ranging from a minimum of Rp500,000.00 (five hundred thousand rupiah) to a maximum of Rp600,000,000.00 (six hundred million rupiah), depending on the extent of the losses suffered by the victim. It appears that these amounts will not be sustainable in the long term, given the fluctuations in the value of the rupiah. There is always the possibility that while Rp25,000.00 (twenty-five thousand rupiah) is currently enough to buy a serving of meatballs, in the future the same amount may no longer be sufficient to purchase a serving of meatballs.

Not to mention that, when viewed from this perspective, there are at least nominal variations in the cost of a decent standard of living across each regency, city, and province in Indonesia. In other words, the needs of different regions cannot be equated based solely on the nominal figures set forth in Government Regulation 92/2015.

Mechanism for Implementing the Splitting Cost Scheme as a Form of State and Investigator Responsibility for Victims of Wrongful Shootings After Pretrial Decision

In Indonesia's criminal justice system, pretrial is one of the important instruments to control and supervise the actions of law enforcement officials, especially in the investigation stage.³⁶ Pretrial

³⁵ Muhammad Adiguna Bimasakti, "Penyelesaian Sengketa di Ombudsman dan di Pengadilan Mengenai Ganti Kerugian dalam Pelayanan Publik" *Jurnal Hukum Peratun*, (2019) 2, p. 213.

³⁶ Supriyadi Widodo Eddyono and Erasmus Napitupulu, *Prospek Hakim Pemeriksa Pendahuluan dalam Pengawasan Penahanan dalam Rancangan KUHAP*, (Jakarta: Institute for Criminal Justice Reform, 2014).

provides space for citizens to challenge the actions of investigators or public prosecutors that are deemed unlawful, such as arrest, detention, search and seizure.³⁷ One form of lawsuit that can be filed through pretrial is a request for compensation and rehabilitation for legal actions that are carried out erroneously or exceed the limits of authority.³⁸ In this context, one of the most crucial and detrimental actions is the wrongful shooting by law enforcement officers, which in practice can cause serious injuries and even death to victims who are not the legitimate targets of such repressive actions.

The proposed splitting cost scheme requires a stronger conceptual foundation in order to move beyond a purely practical or policy-based approach. In this regard, the model can be theoretically grounded in the doctrine of *apportionment of liability*, which is well recognized in comparative legal systems, particularly in tort law. This doctrine allows responsibility for a single harm to be proportionally distributed among multiple parties based on their respective degrees of fault and contribution to the damage.³⁹ In the context of wrongful shooting resulting from mistaken identity (*error in persona*), the harm suffered by the victim is not solely attributable to an individual investigator, but may also involve systemic or institutional factors, such as inadequate training, weak supervision, or flawed operational procedures. Therefore, attributing full liability exclusively to the state, as currently practiced, overlooks the role of individual fault, while attributing it solely to the investigator ignores the structural dimensions of law enforcement.⁴⁰

Furthermore, this model is consistent with the theory of corrective justice as developed by Ernest J. Weinrib, which emphasizes that a party who causes harm has a moral and legal obligation to repair the loss suffered by the victim. In situations where harm arises from both individual actions and institutional context, corrective justice does not preclude shared responsibility. Instead, it supports a framework in which each contributing party bears a corresponding obligation to restore the victim's position.⁴¹ Accordingly, the splitting cost scheme is not merely an administrative innovation, but a conceptually grounded model that reflects both doctrinal principles of liability distribution and normative demands of justice within the criminal justice system.⁴²

Cases of misfires by investigators or police officers often occur in situations of chasing suspects, raids, or security operations. Under certain conditions, officers use firearms as a means of defense or attack, but it is not uncommon for these actions to be carried out rashly, without a strong legal basis and appropriate procedures.⁴³ The wrongful shooting action is certainly a very serious form of human rights violation, because it involves the safety of a person's life. When victims of wrongful shootings or their heirs bring the case to the pretrial court, and the judge declares that the action is unlawful, then the victim is entitled to compensation. A pretrial decision that grants the request for

³⁷ Joko Jumadi, "Efektifitas Praperadilan dalam Sistem Peradilan Pidana Anak di Indonesia," *JATISWARA* 33, no. 1 (2018).

³⁸ Tornado, *Praperadilan: Sarana Perlindungan Tersangka dalam Sistem Peradilan Pidana Indonesia*.

³⁹ Basil S Markesinis and Hannes Unberath, *The German Law of Torts: A Comparative Treatise* (Bloomsbury Publishing, 2002).

⁴⁰ Guido Calabresi, *The Costs of Accidents: A Legal and Economic Analysis* (HeinOnline).

⁴¹ Ernest J Weinrib, "Corrective Justice in a Nutshell," *The University of Toronto Law Journal* 52, no. 4 (2002): 349–56.

⁴² Weinrib.

⁴³ M Aditya Pradana, *Parameter Overmacht (Keadaan Memaksa) dalam Penggunaan Senjata Api oleh Kepolisian*, (Universitas Islam Sultan Agung Semarang, 2024).

compensation is a form of state recognition of the procedural errors of its apparatus, and becomes a moral and juridical basis for the restoration of victims' rights.⁴⁴

However, in the implementation of pretrial decisions involving the payment of compensation, the issue arises as to who is actually responsible for the payment. Based on existing practice, compensation is paid by the state, either through the police institution administratively or from the state budget.⁴⁵ In this case, the state bears the entire burden of the losses caused by the actions of its apparatus, while the direct perpetrators, namely the investigators or members who misfired, are not subject to direct material responsibility. This raises debates in the perspective of legal justice, because responsibility is not borne proportionally between the institution and the perpetrator. The state as a legal entity bears the losses, but individuals who should also be held responsible are not subject to consequences other than administrative or ethical sanctions, if any.

Within this framework, the idea of applying a *splitting cost* scheme as an alternative solution in addressing the liability for compensation to victims of wrongful shootings has emerged. *Splitting cost*, in general, is the concept of sharing the cost burden between two or more parties involved in a legal relationship or legal event. In this context, *splitting costs* is interpreted as a mechanism for sharing the responsibility for compensation between the state and investigators, based on the principles of proportional justice and personal accountability. The application of this scheme aims to create a balance between the state's responsibility as a protector of citizens' rights and the individual responsibility of investigators who make fatal mistakes in their duties.

Theoretically, the *cost splitting* scheme can be considered as a manifestation of two different but complementary legal principles, namely *vicarious liability* and *personal liability*.⁴⁶ The principle of *vicarious liability* states that the state as an employer or institution is responsible for unlawful acts committed by its subordinates during the course of their duties. Meanwhile, the principle of *personal liability* requires individual investigators who violate the law to also bear the consequences of their mistakes personally. If only the first principle is applied, there will be an impression that law enforcement officers cannot be personally touched for their mistakes, because the state always acts as the final insurer. In fact, in the context of a democratic state of law, individual state officials must be responsible for every legal action taken, especially if it causes serious harm to the community.⁴⁷

The application of a *cost splitting* scheme in a wrongful shooting case is not solely interpreted as a rigid division of nominal losses between the state and investigators, but must be adjusted to comprehensive contextual considerations. In this case, pretrial judges have room to consider various relevant aspects in order to decide on a verdict that reflects substantive justice.⁴⁸ One approach that

⁴⁴ Rezmi Angga Aprianto, *Implementasi Restorative Justice Pada Tahap Penyelidikan di Kepolisian Resor Kendal*, (Universitas Islam Sultan Agung Semarang, 2023).

⁴⁵ Abdurrahman Hamidah, "Pertanggungjawaban Jawab Negara terhadap Korban Salah Tangkap dalam Tindakan Kepolisian Melalui Ganti Rugi," 2019.

⁴⁶ Zulian Claudia and Ariawan Gunadi, "Vicarious Liability in Personal Data Protection," *Rechtsidee* 11, no. 2 (2023): 10–21070.

⁴⁷ Ahmad Ziruddin, Kholilur Rahman, and Mohammad Agus Maulidi, *Merawat Negara Hukum* (Guepedia, 2023).

⁴⁸ Bun Joko Sudarmono, Joko Widarto, and Dyah Permata Budi Asri, "Analisis Yuridis Terhadap Praperadilan Berdasarkan Pasal 83 Kitab Undang-Undang Hukum Acara Pidana (Studi Kasus Putusan Praperadilan Negeri Denpasar Perkara Nomor: 20/Pid. Pra/2023/Pn. Dps)," *Almufi Jurnal Sosial Dan Humaniora* 2, no. 2 (2025): 1–14.

can be taken is to determine the amount of responsibility based on the proportion of fault and the factual conditions of the parties. For example, judges can consider the level of loss of the victim, whether physical, psychological, or socio-economic, to determine the appropriate value of compensation. But at the same time, the condition of the respondent or investigator also needs to be taken into account, such as the level of negligence, disciplinary history, rank, position, salary, and workload or operational pressure when the shooting incident occurred. If it is proven that the investigator acted out of procedure or violated operational standards with full awareness, then the contribution of his personal responsibility can be enlarged in the verdict.

Conversely, if it is found that the error occurred in a non-ideal work situation, such as excessive operational burden, limited facilities, or unclear superior orders, then the proportion of institutional responsibility from the state can be enlarged. The judge can also explore additional facts, such as the existence of preventive efforts or apologies from the investigator, which can be used as a basis to lighten the burden of compensation imposed on him. Therefore, a fair pretrial verdict in the context of applying a *cost splitting* scheme must be contextual, proportional, and consider the moral, social, and economic aspects of each party, not just the formality of sharing the burden between individuals and the state. This approach will ensure the achievement of justice that is more complete and applicable in cases of violations of the law by law enforcement officials.

The following is a *splitting cost* scheme as a form of accountability between the state and investigators for victims of wrongful shootings, which can be used as a guideline for pretrial decisions:

Table 1.
Skema *Splitting Cost*

Assessment Component	Description	Percentage of Responsibility
Level of Individual Fault	The extent to which the investigator went beyond procedure or was willful.	If high the investigator is greater than the state, If low the investigator is less than the state.
Institutional Support	Whether there are systemic weaknesses in training, supervision, or internal procedures.	If systemic weaknesses the burden is greater on the state
Operational Conditions	Including work pressure, emergency situations, limited infrastructure at the time of the incident.	If proven to cost a greater proportion of the state
Investigator's Economic Capability	Based on the rank, salary, and living dependents of the investigator.	Adjustment of the nominal compensation charged
Victim's Loss	Includes physical, psychological injuries, material losses, or loss of family life.	Determine the total compensation that is shared
Investigator's Cooperative Attitude	Includes apology, admission of guilt, or good faith.	May reduce the percentage of individual responsibility
Ethical & Internal Assessments	Results from ethics hearings, supervision, or independent investigative audits.	Provides an objective basis for the proportion of the burden of responsibility

Source: *personally processed by the author*

However, the application of the *cost splitting* scheme does not necessarily work in the Indonesian legal system without obstacles. The main challenge lies in the normative aspect, as there are no provisions in the KUHAP or its implementing regulations that regulate the division of responsibility between the state and law enforcement officials. The KUHAP only stipulates that victims are entitled to compensation and rehabilitation, but does not explain the payment mechanism in detail.⁴⁹ So far, responsibility for the implementation of pretrial decisions tends to be delegated to institutions, without involving individual perpetrators. This is reinforced by the hierarchical and corps-based organizational structure of law enforcement officers, which creates resistance when there are demands that officers be held personally responsible.

In addition, there is no administrative mechanism that allows for the legal and fair collection of compensation from officials. In some cases, the only sanctions given to officials who commit violations are reprimands, transfers, or delays in promotion. There is no official mechanism to confiscate or reduce the income of officials as a form of contribution to compensation payments. Therefore, it is necessary to establish regulations that explicitly regulate the division of responsibility in the event that investigators commit violations of the law that result in harm to citizens, including arrangements regarding the legal basis for salary deductions, objection mechanisms, and regression procedures by the state.

In addition to normative and administrative aspects, it is necessary to consider the internal culture of law enforcement institutions that uphold corps solidarity. While positive, this culture can pose challenges when individual responsibility needs to be upheld. Therefore, the *splitting cost* approach should consider structural justice, which assesses the extent to which officers' actions are influenced by institutional factors such as training, supervision, or assignment. Objective evaluation through internal audits or independent ethics boards can help determine a fair proportion of responsibility. Thus, compensation policies are not only repressive, but also constructive and contextual, maintaining a balance between victim protection, respect for the professionalism of the apparatus, and continuous improvement of the legal system.

Despite these challenges, the implementation of a *cost splitting* scheme has strategic value in building a more accountable and fair criminal justice system. This scheme not only provides a more comprehensive recovery for victims, but also encourages the establishment of a culture of responsibility among law enforcement officials. Investigators will be more careful in carrying out their duties because they know that wrong actions can result in personal liability.⁵⁰ On the other hand, the victim or the victim's family will feel that justice is served in full, because the perpetrator directly bears the consequences of his actions, not just the state in the abstract.

In the long term, implementing a *cost splitting* scheme will also contribute to bureaucratic reform and law enforcement efforts in Indonesia. The state can establish a compensation fund managed by an independent institution as a form of public responsibility for victims of apparatus

⁴⁹ Nita Yuniati, "Perlindungan Hukum terhadap Korban Kejahatan.," *Jurnal Ilmu Hukum, Humaniora dan Politik (JIHHP)* 4, no. 6 (2024).

⁵⁰ Muhammad Abdul Kholiq, "Penyidikan dengan Cara Kekerasan terhadap Tersangka Ditinjau dari Hukum Pidana," 2012.

actions. This fund can be used for temporary compensation payments, which are then billed back to institutions and individual officers based on internal or court decisions. With a system like this, the process of recovering victims can run quickly, but the accountability of the apparatus is maintained. Furthermore, the *splitting cost* approach is also in line with the values of restorative justice that are currently being mainstreamed in the Indonesian criminal justice system. Restorative justice emphasizes victim recovery, perpetrator accountability, and restoration of social relations.⁵¹ In wrongful conviction cases, restorative justice can be achieved not only through apologies or mediation processes, but also through concrete acknowledgement of responsibility, including in the form of material contributions towards compensation.⁵² Thus, the *splitting cost* scheme becomes a concrete form of implementing these values within a formal legal framework.

The form of solution offered and discussed in this article relates to the nominal compensation that is not only charged by the state, but uses a *splitting cost* scheme that can provide a breakthrough solution to state losses due to unlawful acts committed by unscrupulous investigators for wrongful shooting due to wrongful arrest and at the same time can provide a deterrent effect on the investigators themselves and other investigators as law enforcement officers to always be careful of the rights of civilians. The burden of compensation that has existed in the current pretrial system is only charged by the state, which is more impressed that the investigator is not given direct responsibility for his actions against the victim, even though the actions of the investigator have obviously harmed the victim. Therefore, the *splitting cost* scheme that will be discussed later is expected to provide a sense of justice and direct responsibility between the perpetrator and the victim, but on the other hand the state still has responsibility for the actions of one of its 'subordinates' who is in the position of the perpetrator and the community as a victim.

Thus, the *splitting cost* mechanism is not only an administrative solution to the problem of compensation in wrongful shooting cases, but also part of a major transformation in the justice system in Indonesia. Through the implementation of this mechanism, the Indonesian legal system will not only protect victims more fairly, but also establish law enforcement officers who are responsible, professional, and have high integrity.

CLOSING

The application of the *splitting cost* mechanism in the pretrial of wrongful shooting cases is a progressive effort in creating a fair and proportional accountability system between the state and law enforcement officials. So far, the burden of compensation has been fully borne by the state, while individual investigators as direct perpetrators often escape material responsibility. The *splitting cost* scheme allows the division of responsibility based on the level of error, operational conditions, and other objective factors, thus encouraging the creation of substantive justice and increasing the personal accountability of the apparatus. In addition to providing more comprehensive protection

⁵¹ Arpandi Karjono, Parningotan Malau, and Ciptono Ciptono, "Penerapan Keadilan Restoratif Justice dalam Hukum Pidana Berbasis Kearifan Lokal," *Jurnal Usm Law Review* 7, no. 2 (2024): 1035–50.

⁵² Ahmad Syahril Yunus, *Restorative Justice di Indonesia* (Guepedia, 2021).

for victims, this approach also reinforces the values of restorative justice, promotes the professionalism of officials, and contributes to the reform of the criminal justice system. However, its implementation requires a strong legal foundation, clear administrative mechanisms, and a change in institutional culture in favor of transparency and accountability.

To achieve this, support is needed from various parties, including the government, Parliament, judiciary, law enforcement institutions, and civil society. The government and Parliament can start by revising the KUHAP and regulating the mechanism of joint responsibility between the state and investigators. Law enforcement institutions need to develop internal regulations governing ethical and administrative liability for investigators who commit serious violations of the law. Oversight institutions such as Komnas HAM and the Ombudsman can be actively involved in monitoring and evaluating the implementation of this policy, while civil society and academia can strengthen the discourse through advocacy and ongoing legal research.

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