

Implementing Compensation for Crimes against Jarimah Criminals, Who Are Arrested, Detained, Wrong In Applying the Law, and Mistaken About the Person

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Abstract : This study will discuss how the implementation of the rules for implementing compensation for crimes against jarimah criminals, who are arrested, detained, wrong in applying the law, and mistaken about the person. The purpose of this study is to find out and analyze the implementation of the rules for implementing compensation for the perpetrators of criminal acts jarimah, who were arrested, detained, wrong in the application of the law, and mistake about the person. Implementation of the implementation of compensation cases handled by the Banda Aceh Syar'iyah Court on cases of wrongful arrests, wrong implementation of criminal law, once there was 1 (one) case, namely in 2016 as the Decision of the Banda Aceh Syar'iyah Court Number 01/Pre.JN/2016/MS.BNA. MS as the plaintiff demanded compensation through a pretrial lawsuit due to the confiscation of evidence including his illegal arrest. The final pretrial ruling on the Decision of the Banda Aceh Syar'iyah Court Number 01 / Pra.JN / 2016 / MS.BNA was not received and completely rejected by the Banda Aceh Syar'iyah Court, including the statement of evidence that had been returned and as the witnesses stated though there was a seizure at that time. The judge judged because the investigator did not make arrests that were outside the arrest procedure as the perpetrators charged but the perpetrators were positioned caught by the residents.

Keywords: Aceh *Qanun*, compensation, jarimah criminals, Indonesia

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I. INTRODUCTION

The State of Indonesia is a country based on law as referred to in Article 1 paragraph (3) of the 1945 State Law of the Republic of Indonesia (hereinafter written in the 1945 Constitution). Therefore, the state has an obligation to guarantee and protect the rights of every citizen without exception including the right to life, the right to obtain a decent life, the right to equal position before the law. This is in accordance with the objectives of the Indonesian state based on the Pancasila and the 1945 Constitution which protects the entire Indonesian nation and all of Indonesia's bloodshed, advances public welfare, educates the nation's life, and participates in carrying out world order based on freedom, eternal peace and social justice.

Nowadays the crime of Jarimah both Khalwat, Ikhtilath, Liwath, Rape and maisan are increasingly common in Aceh. Crimes that occur not only to fulfill the desire to maintain life or seek wealth, among others, to gamble and desire sexual desire, among others, making out or having free sex. Crime also occurs because of cruel sexual desires which in legal language moral crimes include rape and obscene acts. Likewise the crimes committed by jarimah perpetrators can have negative consequences for society and the state for now and for the future. Jarimah's crime or in this writing is called "jarimah" is an act that is prohibited by Islamic Law which in this Qanun is threatened with 'Uqubat Hudud and / or Ta'zir.

Republic of Indonesia Government Regulation Number 92 of 2015 concerning the Second Amendment to Government Regulation Number 27 of 1983 concerning Implementation of the Criminal Procedure Code governs compensation in the implementation of the Criminal Procedure Code (Mahendra Putra Kurnia, 2007), including:

1. Article 77 of the Republic of Indonesia 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.

2. Article 9 of the Republic of Indonesia 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.
3. Article 10 of the Republic of Indonesia 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.

The legal basis for granting compensation is as stipulated in Article 9 paragraph (1) of Law Number 48 of 2009 concerning Judicial Power which states that: "Anyone who is arrested, detained, prosecuted or tried without reason under the law or because of an error regarding the person or the law applied, has the right to demand compensation and rehabilitation " (Maria Farida Indrati, 2007). The legal basis stipulated in Law Number 48 of 2009 concerning Judicial Power is then elaborated through the articles of the Criminal Procedure Code, namely Article 95 and Article 96 of the Criminal Procedure Code. As the general provisions contained in Article 1 point 22 of the Criminal Procedure Code which read: "Compensation is the right of a person to obtain fulfillment of his demands in the form of monetary rewards for being arrested, detained, prosecuted, or tried without reason based on law or due to errors regarding his person or law applied according to the method stipulated in this law ". Whereas in Article 68 paragraphs (1), (2), (3) and (4) Aceh Qanun Number 6 of 2014 concerning Jinayat Law explains if those arrested and detained by authorities suspected of doing jarimah without going through legal procedures or processes or errors in the application of the law, or a mistake regarding the person, the person detained and after that was severed freely by the court, has the right to receive compensation, then further provisions regarding compensation are carried out based on the Governor's Regulation but the regulation does not yet exist to date.

According to Sudarto, actions to be considered as crimes need to be determined as such by the authorities and can be subject to criminal sanctions (Sudarto, 1986). Meanwhile, according to Moelyatno, criminal acts are acts that are prohibited by a rule of law accompanied by criminal sanctions that will be applied to people guilty of violating the prohibition (Moelyatno, 1985). According to Bambang Poenomo, criminal acts are acts which are prohibited by criminal law and threatened with criminal acts for those who violate the prohibition (Bambang Pornomo, 1985). The word *Kesusilaan* according to the Big Dictionary of Indonesian Language is good in language, good, polite, orderly and good customs (Bambang Pornomo, 1994). According to Laden Marpaung Decency is related to morals, ethics which have been regulated in legislation (Leden Marpaung, 2004).

Aceh Qanun Number 6 of 2014 concerning Jinayat Law and Aceh Qanun Number 7 of 2013 concerning Jinayat Procedure Law is a positive law that applies in Aceh which is a legal product based on Law Number 44 of 1999 concerning the Implementation of Aceh Province Privileges and Law Number 11 2006 concerning Aceh Government.

In the jinayat law enforcement there is the role of the Attorney General's Office as a Public Prosecutor starting from the prosecution, prosecution, and as the executor of court decisions that have obtained permanent legal force. Jinayat law enforcement based on Aceh Qanun Number 6 Year 2014 and Aceh Qanun Number 7 Year 2013 are based on the principles of legality, justice and balance, protection of human rights, presumption of innocence, compensation and rehabilitation, justice is comprehensive, simple, fast and low cost, the judiciary is open to the public, the power of legitimate, independent and permanent judges, legal assistance to suspects / defendants and learning for the community.

That the role of the Public Prosecutor in law enforcement in accordance with the principles and objectives mentioned above is crucial in addition to the role of the National Police / PPNS as investigators, and the Court as the judge examining and adjudicating and the role of detention centers, prisons and the Office of Islamic Law as the perpetrators of jarimah detained, carrying out court decisions that have obtained permanent legal force. Therefore, among the jinayat law enforcement officials and institutions that shelter it institutionally, they can cooperate / coordinate well so that what is mandated by the Jinayat Qanun can be fulfilled. In order to get an idea of whether the existing legal regulations are good if it is not able to accommodate legal gaps or existing legal issues so that the practice of implementing compensation for alleged perpetrators of Jarimah in Jinayat Law can be carried out as expected.

This study will discuss how the implementation of the rules for the implementation of compensation for the perpetrators of jarimah crime, who are arrested, detained, wrong in applying the law, and mistake about the person? The purpose of this study is to find out and analyze the implementation of the rules for implementing compensation for the perpetrators of criminal acts jarimah, who were arrested, detained, wrong in the application of the law, and mistake about the person.

II. LITERATURE REVIEW

In human life that interacts with each other, community relations require an orderly state in order to live a peaceful, peaceful and prosperous life. This need for order is the most fundamental requirement for the creation of an orderly society. Whereas order itself is the most basic and first goal of all laws.

Law, as a rule for humans to behave which is currently still valid and used in Indonesia as a positive law is a man-made product and there is even a colonial legal product, for example the Criminal Code (KUHP) which was adopted as a national law which until now is still in effect. The legal product is basically man-made which certainly has many weaknesses in its application or law enforcement process itself. The process of law enforcement in particular is often seen as discriminatory, inconsistent, does not use objective parameters, and prioritizes the interests of certain groups. The benchmarks used are often criminal disparities or differences in imposing penalties for various types of crimes.

Law is a set of rules that contain a kind of unity that we understand through a system (Hans Kelsen, 2008: 8). A general understanding of the system says, that a system is a complex entity, which consists of parts that are related to each other (Satjipto Rahardjo, 2000: 48).

The system comes from the Greek "systema" which can be interpreted as a whole consisting of various parts. Prof. Subekti, SH mentions the system is an orderly arrangement or order, a whole consisting of parts that are related to one another, arranged according to a plan or pattern, the result of a writing to achieve a goal " (Inu Kencana Syafii, 2003: 2).

Thus, the formation of a national legal system and legal politics should be an important study so that the national development framework moves within the corridor of the legal and legal political system that is understood by all levels of society.

Every legal system contains at least the following elements: (1) laws or legal regulations stipulated by the legislature; (2) decisions of the judiciary, tradition and principles recognized by the judiciary with legally binding effects; and (3) various types of legal institutions that determine and carry out legal principles and decisions. Therefore, every law or legal decision must be placed within the frame of the legal system (Yong Ohoimur, 2012: 1). In Fuller's view, to find out about the existence of a legal system, 8 (eight) principles must be put in place, namely the principles of legality, namely:

1. A legal system must contain rules.
2. The regulations that have been made must be announced.
3. There must be no retroactive rules.
4. Regulations must be arranged in an understandable formula.
5. A system must not contain rules that conflict with each other.
6. Regulations may not contain demands that exceed what can be done.
7. There should be no habit to change regulations frequently so that people will lose orientation.
8. There must be a match between the regulations promulgated and their daily implementation.

Furthermore, a simple formula to limit without reducing the meaning of the nature of the legal system itself, in the opinion of Lawrence M. Friedman can be a reference. Friedman divided the legal system into 3 (three) parts, namely: legal structure, legal substance, and legal culture (Lawrence M. Friedman, 2009: 33). Legal structure is a structural component or organ that is engaged in a mechanism, both in making regulations, and in implementing or implementing regulations. The substance of the law is a product of the legal structure, both regulations are made through a formal structure mechanism or regulation that is born out of habit. Whereas legal culture is the value, thought, and hope of the method or norm in the social life of the community.

According to Solly Lubis, the reality of state life over the past three decades proved the inconsistency and deviation of the basic concept of the management system that should have been, namely the 1945 Constitution. disparities, both in the social polics, as well as socio-economic, socio-cultural, security and public order defense (Hankambmas). In principle, the demands of reforming the nation's life management system as a whole are what require the existence of polik policy reforms and legal system reform, so that national management can be returned to the system with a basic concept of constitution.

However, in establishing a legal system, the competent authority should be obliged to treat the legal inputs that enter into the extraction of legal norms into the regulations that are formed. Most of us rarely treat the legal input. According to Lawrence M. Friedmann, legal input is a shock wave in the form of demands originating from the community which ultimately moves the legal process. Friedmann continues that the majority of legal experts are concentrated in the legal output, so that the understanding of the formation of a legislative product is not comprehensive (Lawrence M. Friedmann, 2011: 3).

III. IMPLEMENTATION OF THE RULES FOR IMPLEMENTING DAMAGE DETERMINATION ON THE ACTORS OF PIDANA JARIMAH, WHO WAS ARRESTED, DETAINED, WRONG IN THE APPLICATION OF THE LAW, AND ERRORS ABOUT HIS PERSON

The 1945 Constitution of the Republic of Indonesia in the Third Amendment of 2001 namely Article 1 paragraph (3) affirms that Indonesia is a state based on law (*rechtstaat*), not based on power (*machtsstaat*). This can mean that every citizen must act in accordance with applicable law. Where the conception of *rechtstaat* places human rights as one of the characteristics. There are 2 (two) major traditions of the idea of a rule of law in the world, namely the rule of law in the Continental European tradition called *Rechtsstaat* and the state of law in the Anglo Saxon tradition called the Rule of Law.

Moh. Kusnadi and Bintang Saragih argue that the characteristics of a fundamental legal state in a legal state are (1) Recognition and protection of human rights that contain equality in the political, legal, social, cultural and educational fields; (2) A free, impartial judiciary is not influenced by any other power; (3) Legality in the legal sense in all its forms (Moh. Kusnadi and Bintang R. Saragih, 1983: 27).

As these three elements can be said that these elements can not be separated in the discussion, although it may be intrinsically interpreted according to their characteristics. Therefore, a legal state cannot be regarded as a legal state if the country concerned does not give an award and guarantees the protection of human rights.

Masyhur Effendy argues that human rights with a legal state cannot be separated, instead think legally related to the idea of how justice and order can be realized. Thus the recognition and confirmation of the rule of law is one of the aims of protecting human rights, meaning that rights and at the same time individual freedom are recognized, respected and upheld (Masyhur Effendy, 1994: 27). Therefore, as a legal state, Indonesia must uphold the law and rule of law, meaning that the state in carrying out any action must be legally based and legally accountable. Legal culture is developed in all walks of life in order to create legal awareness and compliance within the framework of the rule of law and the establishment of a rule of law.

Regarding the formulation of human rights protection, the arrangement is contained in the 1945 Constitution (Fourth Amendment of 2002) in Articles 28 A through 28 J, namely: Article 28 D paragraph (1) stipulates that everyone has the right to recognition, guarantee, protection and legal certainty fair and equal treatment before the law. Article 28 I paragraph (4) which regulates that the protection, promotion, enforcement and fulfillment of human rights are the responsibility of the state, especially the government. Article 28 paragraph (5) "To uphold and protect human rights in accordance with the principles of a democratic legal state, the implementation of human rights is guaranteed, regulated, and set forth in legislation.

Furthermore, the protection of human rights is outlined in laws and regulations that are under the hierarchy of the 1945 Constitution. One of the legislation that describes the protection of human rights is Law Number 8 of 1981 concerning the Criminal Procedure Code (KUHAP) which also contains compensation. Compensation is the replacement of money or other goods to someone who feels aggrieved because their property or rights are taken. Compensation in the criminal domain means an obligation imposed on people who have acted against the law and caused harm to others because of their mistakes.

Compensation in the scope of civil law is broader than compensation in criminal law, because compensation in civil law (referring to Article 1365 of the Civil Code) is to return the plaintiff to the original state before the harm caused by the defendant occurs. In civil law compensation can be requested as high as high (no minimum and maximum amount) including material losses and immaterial losses. Material loss is a loss that can be calculated with money, a loss of wealth which is usually in the form of money, including losses suffered and has clearly suffered. While immaterial losses / idiosyncratic losses or moral losses, namely losses that cannot be assessed in a fixed amount. For example a sense of fear, loss of pleasure or disability of limbs.

Replace damages in criminal law only for costs or costs incurred by the victim. This means that the immaterial is not included. Compensation in criminal law can be requested for 2 actions, namely because of the actions of law enforcement officers and because of the actions of the defendant.

Aceh Qanun Number 6 of 2014 concerning Jinayat Law is applied to fulfill the needs of Islamic law for the people of Aceh. Jinayat Qanun is a refinement of the three previous Qanuns in the jinayat field which were previously applicable to Khamar, Maisir and Khalwat.

Article 1 Jinayat Law Qanun consists of 10 criminal acts, namely: khamar, maysir, khalwat, ikhtilat, zina, sexual harassment, rape, qadhaf, liwat, and musahaqah. Regarding the discussion, Aceh Qanun Number 6 of 2014 concerning Jinayat Law is also regulated regarding compensation for those suspected of being jarimah criminals, who were arrested, detained, wrong in applying the law, and mistaken about the person in Article 68 Paragraph (1), (2), (3), and (4) which states that: (1) Every person who is arrested and detained by the authorities suspected of doing Jarimah without going through legal procedures or processes or errors in the application of the law, or errors regarding his person, is entitled to compensation. (2) Anyone who is detained and after that has been acquitted by the court, has the right to receive compensation. (3) The compensation referred to in paragraph (1) and paragraph (2) for one day shall be set at 0.3 (zero point three) grams of pure

gold or money whose value is equivalent to that. (4) Further provisions regarding compensation as referred to in paragraph (3) are regulated in the Governor's Regulation.

Islam is a comprehensive, humane, moderate and dynamic religion. The characteristics of Islamic teachings are comprehensive (comprehensive) and perfect and complement the teachings of divine Islam. The characteristics of humanist Islamic teachings can be seen from efforts to protect human rights as can be seen in terms of vision, mission, and purpose, namely that Islam has the characteristics not only to prosper the life of the world or the hereafter, but also to provide physical and spiritual welfare. individually and socially, physically and mentally.

Islam is very concerned about the protection of each individual through its protection for all individual matters which are material and moral in nature, Islam guarantees the honor of human beings by giving great attention, which can be used to give specialization to their human rights, as compensation for those suspected committing the crime of jarimah itself Syahrizal Abbas stated that:

- 1) The principle of Islamic criminal law is to protect, protect the community both perpetrators and victims of the criminal acts of my civilians and the public. The form of protecting and protecting one's people tends to understand the criminal offender why is it protected and protected, the Jinayat law plays a role and functions so that the person who commits the crime of jarimah is protected and protected from: first: because the Shari'a law is related to divinity, spirituality and theology, protecting him from immorality and sin to god because what he violates is the norm of God's rule, because even though the victim sociologically the victim's family is not comfortable with the perpetrator, mentally he will not be beaten or tortured by the victim's family, psychologically he is protected by the law he does not can be done pressure (emphasis) on the perpetrator, the meaning jinayat law protects and protects the perpetrator even though he has committed a criminal act jarimah, so there is a divine spiritual value with him undergoing this sentence then he "freed" from the violation of immorality to God.
- 2) Jinayat's law protects and protects the victim, meaning that he is a victim in this context as the person who gets the object from the Sipelaku jarimah, for example he is raped (as a victim). this jinayat law protects him by carrying out the punishment so that both directly and indirectly it will protect the victim. Directly, namely with my guardian serving a sentence or a judicial process, the law has provided assurance that the victim of the person who committed the act is worthy of carrying out the legal consequences of his actions, the victim is psychologically depressed due to my guardian. So he by practicing the jinayat law psychologically especially if it is said to violate Shari'a norms, he will be psychologically rehabilitated because of being a victim.
- 3) Those three are people who in principle, people who are wrongly arrested (not victims) are people who are wrongly treated, wrongly arrested, so because the principle of Shari'a law is protecting and protecting and never decreasing human dignity, sharia law consensus when wrong has an obligation in Shari'a law to provide everything that violates the dignity of humanity, requires (state authority) in the language of jurisprudence Ulil Amri as the holder of the authority of the state that is obliged to revive human dignity that has been wrongly treated by law. The principle of the Shari'a is that there is an obligation to provide compensation for property, non-assets (rehabilitation of reputation).

In making a decision, the judge must consider the legal principles written in the laws and regulations and if there are no principles, the judge can explore the legal principles that exist in society. This is in accordance with what is stated in Article 5 paragraph (1) of Law Number 4 of 2004 concerning Judicial Power, which states that: "The court adjudicates according to the law by not discriminating against people". Judging according to law is the principle in holding a trial. A trial that is not carried out according to the law will result in disorder and justice which is null and void by law.

History was wrongly caught, wrongly treated people before the law, at the time of the Prophet Muhammad and his friend the mechanism was very causal where the norm was there but not in writing in a context that could be read textually, Syahrizal Abbas gave an example of Ali's armor case, where Ali hostile to Jews, the Jews claimed that the armor belonged to him while Ali claimed the armor belonged to him, the evidence possessed by the Jews was far stronger than that of Ali. Until the process of being judged, the Jew could prove that he had mastered Ali's armor long enough to have been used several times in the war. In the process of proving in the court (court) it turned out that the lawsuit filed by Ali was not proven that it was his (the evidence must be submitted by the prosecutor) so that the court declared that it was the owner. Because the judge decides based on what is seen and what is witnessed, so that the Jew feels very just this judge, even though he knows that it is not his.

Furthermore, the problem is as long as the clothes are controlled by Jews, how much loss is Ali ?, if measured a lot of material losses as long as Ali fought in war without using his armor if calculated with spoils of war, this is what Ali no longer has. We can use the story as a reference that there is a return of assets when the Jews control Ali's armor, no matter how much my losses (Jewish) will return to Ali because you are the most

honest person, you have the power but do not impose that power from me, the phrase This Jew became the basis for compensation in the Islamic tradition.

That was the basis for people who were mistakenly arrested, imprisoned, wrongly jailed after the legal process, apparently rehabilitated with good reputation, it was announced to the public that he was innocent. The state is responsible for that, this is what becomes a tradition or sunna as the basis for the compensation.

Therefore, any person suspected of being a criminal offender, who is arrested, detained, wrong in applying the law, and is mistaken about his person must be found not guilty as Alyasa 'Abubakar states that: (a) basically everyone is considered to be doing good and not guilty, the wrongdoer is an exception, the point is that if someone makes a mistake it must be proven; (b) basically each person is free, arrest and detention is an exception, when a person is wrongly arrested it means he is harmed and he is entitled to compensation

Punishing is not only part of the judge's process, but punishing people fairly in the Islamic jurisprudence law (jinayat) starting from investigations, investigations, prosecutions, verdicts, executions, prison and returns to the community must run and in the process of a fair level.

In the eyes of Islam the primacy of the duties of judges is reflected in the word of Allah SWT namely: "And it is valid. Indeed, Allah likes those who are just. (Surah Al-Hujurat / 49: 9). and "If you punish, decide the law among men fairly. Indeed, Allah loves those who are just. "(Surah Al Maidah / 5: 42). In the verses of the Qur'an it is illustrated that a just judge will have the honor of God. While judges who deviate from justice, trade cases, accept bribes, engage the legal mafia and so on will face torture in the hereafter. "As for those who do not do justice, they will be the log of fire for hell." (QS. Al Jinn / 72: 15).

The model of error in person in Muslim countries based on the state of law has known the behavior of misconduct in the law enforcement process and all recognize compensation, the standard of which is determined by the country. Regarding the amount of compensation received from those suspected of being jarimah criminals, who were arrested, detained, wrong in applying the law, and mistaken about their people, Article 89 paragraph (1) and (2) Aceh Qanun Number 7 Year 2013 concerning the Jinayat Procedure Law stated that: (1) Compensation due to wrongful arrest or detention, for one day is set at 0.3 grams of pure gold or money which is equivalent to that value. (2) Compensation due to search or seizure errors is the amount of damage to the goods resulting from the search and seizure.

Article 89 of the Qanun Aceh Number 7 of 2013 concerning the Jinayat Procedure Law above states that the amount given to victims is wrongly caught per day is 0.3 grams of gold or money worth the gold. The number of provisions given to victims of wrongful arrest or wrong resistance is calculated daily after the victim is arrested and detained. The longer in detention, the more compensation given to the victim.

The qanun provisions are concrete by stating the exact number, the judge in deciding the amount of compensation can only be multiplied by 0.3 grams of gold by the number of days the victim is in detention. While losses in the form of damage to goods or other things caused by searches or seizures are replaced by the amount of the damage.

In addition to regulating criminal acts (jinayat), Aceh Qanun Number 6 of 2014 also determines the mechanism of investigations, investigations and hearings which are institutionally based on the qanun mandated to the Wilayatul Hisbah (WH), Police, Prosecutors and the Mahkamah Syar'iyah. The institutional authority of the agency in handling violations of Islamic shari'a is regulated in more detail in Aceh Qanun Number 7 of 2013 concerning the Jinayat Procedure Law.

Mahkamah Syar'iyah as Islamic Sharia Court as in Article 128 paragraph (2) of Law Number 11 Year 2006 concerning Aceh Government which states that "The Syar'iyah Court is a court for every person who is Muslim and resides in Aceh." 'iyah is a Special Court within the Religion Court as long as it relates to the authority of a religious court, and is a special court in the general court environment as long as it concerns the authority of the general court.

The Syar'iyah Court adheres to 3 (three) levels of justice, namely: the first level, the level of appeal and the level of appeal to the Supreme Court. The Syar'iyah Court in Aceh has been broader in carrying out the obligation to establish Islamic laws, against family law cases (al-akhwal al-syakhshiyah), mu'amalah (civil law) and jinayat (criminal) law.

Furthermore, the Syar'iyah Court is also authorized to prosecute and decide the cases of jarimah (criminal acts), such as the spread of cults (the field of aqeedah), not Friday prayers three times in a row without the old syar'i (field of worship), providing facilities / opportunities to Muslim people without old shar'i not to fast (in the field of worship), eat drinking in public places during the day in the fasting month (the field of worship), and not dress Islamic (the field of syiar Islam). The Syar'iyah Court is also entrusted to try criminal cases in the management of zakat. As stipulated in Qanun Number 7 of 2004 concerning Management of Zakat. The offense is intended, including not paying zakat after maturity, making fake letters or falsifying baitul mal letters, and misusing zakat management.

In the practice of implementing the compensation cases handled by the Banda Aceh Syar'iyah Court on cases of wrongful arrests, the wrong application of criminal law, there was once (one) case in 2016 as the

Decision of the Banda Aceh Syar'iyah Court Number 01/Pre.JN/2016/MS.BNA. MS as the plaintiff demanded compensation through a pretrial lawsuit due to the confiscation of evidence including his illegal arrest.

The Mahkamah Syar'iyah with its authority has examined and tried the Pre-Judicial case regarding the legitimacy of the arrest, detention, search, seizure, examination of the letter, termination of investigation or termination of prosecution. MS as the plaintiff / applicant, stated that the arrest by Wilayatul Hisbah (WH) officers without assignments and arrest warrants was an act contrary to Article 19 Paragraph (1) of Aceh Qanun Number 7 of 2013 concerning Jinayat Procedure Law and in his demands to appeal to the judges Mahkamah Syar'iyah so that the panel of judges of the Syar'iyah Court orders the defendants or defendants (Zakwan as Civil Servant Investigators) to pay immaterial losses of Rp. 2 billion and ordered the defendant to advertise an apology in the newspaper for seven consecutive days.

Regarding the verdict H. Yusri stated that, the final pretrial ruling on the Decision of the Banda Aceh Syar'iyah Court Number 01 / Pra.JN / 2016 / MS.BNA was not accepted and completely rejected by the Syar'iyah Court of Banda Aceh including the statement of evidence that it has been returned and as witnesses have said even though there was a seizure at the time. Furthermore, Marzuki said that:

- a) Generally the cases are handled by the Wilayatul Hisbah (WH) or Wilayatul Hisbah Investigator (WH), most of the cases are captured by citizens; and
- b) When the case as a case caught by citizens and handed over by the community to the Wilayatul Hisbah Investigator (WH) in general there is enough evidence for it with witnesses, so there is no possibility for the family and even the suspect to carry out pretrial.

Marzuki added that the pretrial case in the decision of the Banda Aceh Syar'iyah Court Number 01 / Pra.JN / 2016 / MS.BNA was actually caught by residents, then residents handed over to Wilayatul Hisbah (WH) Banda Aceh City to investigators on behalf of Zakwan. This case was in the position that the suspect was caught in the hands of the villagers, but because the investigator did not show the arrest warrant to the perpetrators so that the person concerned considered it an arrest, finally my guardian sentenced him through his attorney who had several sessions. However, the result of the Court's final verdict stated that the investigator was innocent because it was not a direct investigator who arrested but the citizens so that the court was of the opinion that this included being caught not arrest.

Based on the above, so far the Banda Aceh Syar'iyah Court has never granted a pretrial claim to pay compensation for any person arrested and detained by the authorities suspected of doing jarimah without going through legal procedures or processes or errors in the application of the law, or mistake about the person.

But if in the future and it is possible that there is a lawsuit granted by the Shariah Court to pay compensation, so far the content of material contained in Aceh Qanun Number 7 of 2013 concerning Jinayat Procedure Law, Aceh Qanun Number 6 of 2014 concerning Jinayat and the Aceh Governor Regulation Number 5 Year 2018 as a derivative that has not arranged in detail the mechanism or technical instructions for making this payment. As we know that at all levels of inspection there is a possibility that there will be an error and for correction of the error, the victim can ask for compensation. Any injustice, if it involves losing someone's independence must be returned to a fair situation by providing a number of compensation.

If you see the Criminal Procedure Code in Article 95 paragraph (1) jo. paragraph (3), where the claim for compensation is submitted to the District Court. The implementing rules for granting compensation amounts are regulated in Government Regulation No. 27 of 1983 as amended several times, the latest by Government Regulation No. 92 of 2015 concerning the Second Amendment to Government Regulation Number 27 of 1983 concerning the Implementation of the Criminal Procedure Code. Provisions of Article 10 of Government Regulation Number 92 of 2015 stated that: (1) Excerpts of decisions or stipulations regarding compensation as referred to in Article 8 shall be given to the applicant within 3 (three) days after the verdict is pronounced. (2) Excerpt of the decision or determination of compensation as referred to in paragraph (1) is given to the public prosecutor, investigator, and minister who organizes government affairs in the financial sector.

Furthermore, the provisions of Article 11 of Government Regulation Number 92 of 2015 read: (1) Payment of compensation shall be carried out by the minister who administers government affairs in the financial sector based on excerpts of decisions or judgments as referred to in Article 10. (2) Payment of compensation shall be carried out within a maximum period of 14 (fourteen) working days from the date the application for compensation is received by the minister who administers government affairs in the financial sector. (3) Provisions regarding the procedure for payment of compensation are regulated by a Ministerial Regulation which administers government affairs in the financial sector.

However, although the implementation rules regarding compensation have been regulated in Government Regulation Number 27 of 1983 and have been revised into 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 also in the Decree of the Minister of Finance of the Republic of Indonesia Number 983 / KMK.01 / 1983 concerning Procedures for Payment of Compensation. However, in practice the procedure for requesting compensation is complex. The execution process is also often

hampered by administration and causes the compensation process to be ineffective (Aristo M.A Pangaribuan, 2017: 14).

This is because there are procedures for paying compensation that are so complicated that the compensation disbursement process becomes protracted and not in accordance with Article 11 which states that the payment period is carried out for 14 days. Excerpts of the court required by victims to file compensation are also often hampered by administration for days, even though in Article 10 of Government Regulation Number 92 of 2015 it has been stipulated that court passages can be received by victims within 3 days.

Regarding the implementation of compensation contained in Pergub Number 5 of 2018, it has also not been able to cover what is contained in the Jinayat Qanun, because the mechanism carried out by the Islamic Sharia Office in this case which carries out material compensation has not established a detailed determination as regulated in the Criminal Procedure Code and Government Regulations. Where the legal norms contained in it are not very technical to run so that they experience difficulties in the field.

Furthermore, for example, Syahrizal Abbas stated about compensation due to the mistake of arrest or detention, for 1 (one) day set at 0.3 gram of pure gold or money whose value is equal, technically who and which authority would measure it? Is it judge?, pawnshop? or involve a goldsmith association. It is not clear here that we will find it difficult if the judge decides a case against the compensation. So that the Governor Regulation is not applicable in its implementation.

IV. CONCLUSION

Implementation of the implementation of compensation cases handled by the Banda Aceh Syar'iyah Court on cases of wrongful arrests, wrong implementation of criminal law, once there was 1 (one) case, namely in 2016 as the Decision of the Banda Aceh Syar'iyah Court Number 01 / Pre.JN / 2016 / MS.BNA. MS as the plaintiff demanded compensation through a pretrial lawsuit due to the confiscation of evidence including his illegal arrest. The final pretrial ruling on the Decision of the Banda Aceh Syar'iyah Court Number 01 / Pra.JN / 2016 / MS.BNA was not received and completely rejected by the Banda Aceh Syar'iyah Court, including the statement of evidence that had been returned and as the witnesses stated though there was a seizure at that time. The judge judged because the investigator did not make arrests that were outside the arrest procedure as the perpetrators charged but the perpetrators were positioned caught by the residents.

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