

# Miscarriages of Justice in Indonesia: Marginalized Groups, Structural Victimization, and Formal Social Control

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## ABSTRACT

This research discusses the miscarriages of justice in Indonesia from a criminological perspective. From the various cases obtained, most of them target the marginalized. If this continues, there is a risk that the government and criminal justice system would lose public trust and may cause further negative impacts. The method used is a qualitative method. Primary data collection is carried out by conducting unstructured interviews with practitioners, namely officials from the criminal justice system; government and non-government organizations serving victims; and academics. Secondary data search is done through news collection from the mass media online, the reports from non-government organizations, and the reports from the Directory of Decisions of the Supreme Court of the Republic of Indonesia. Study results show structural victimization, a process originating from the social structure and power in society. Therefore, there is a need for formal social control. Formal social control carried out is system change and human change. Human change is carried out by targeting two elements, namely changes in the elements of the criminal justice system and changes in society. Formal social control would be useful to prevent the occurrence of miscarriages of justice in Indonesia.

**Keywords:** *Miscarriages of justice, Structural victimization, Formal social control.*

## 1. INTRODUCTION

Miscarriages of justice (MOJ) is one of the problems that require great attention in the criminal justice system (CJS) in Indonesia. The main focus of this research is wrongful convictions, where an innocent person is apprehended, tried, and punished for a crime he/she did not commit. In this regard, Garner [1] provides a precise definition of MOJ, namely “a grossly unfair outcome in a judicial proceeding, as when a defendant is convicted despite a lack of evidence on an essential element of the crime.”

According to Forst, 2004, as cited in Poyser & Milne [2], there are two general types of MOJ, errors of due process and errors of impunity. In errors of due process, several violations can occur, such as unwarranted harassment, unjustified detention or conviction, or excessive sanctioning of people suspected of a crime. Errors of impunity refer to “a lapse of justice that allows a culpable offender to remain at large.” Errors of due process can cause errors of impunity. This means that if someone is arrested, accused, and punished for a crime they did not commit, it is highly likely that the person who is actually guilty will remain free and can commit other crimes. In addition, it is also possible that a person guilty of one crime may be punished for another.

According to Hodgson [3], MOJ and the malfunctions they reveal often cause us to reassess systemic problems

as well as those that are case-specific. By systemic, Hodgson shows that MOJ does not occur as a result of one mistake by an individual alone. Denov and Campbell [4] state that both individual and systemic factors inherent in the CJS, alone or together, can contribute to the occurrence of MOJ. These factors include eyewitness error, professional error, false confessions, misuse of forensic science, use of prison informants, and racial bias.

In Indonesia, legal protection for victims of wrongful arrests has been legally regulated in articles 50 to 68 of the Criminal Procedure Code, which essentially upholds the human rights of victims, including the mechanism for dealing with a wrongful arrest. Furthermore, legal protection for citizens in the criminal justice system is essentially absorbed from the principles of equality before the law, the presumption of innocence, and the Miranda rule as mentioned by Jayawisastro and Sugama [5].

Jayawisastro and Sugama further explained that the principle of equality before the law is in line with and is stated in Article 27, paragraph (1) of the 1945 Constitution, and also contained in Law No. 48 of 2009 concerning judicial power, especially in Article 4, which basically states that in court there is no discrimination for anyone in seeking justice.

The principle of presumption of innocence, according to Jayawisastara and Sugama, is a principle that emphasizes that a citizen is a legal individual who is innocent until the court itself decides whether the individual is guilty or not. Although it is not explicitly stated in the Criminal Procedure Code, the general explanation Number 3 in the Criminal Procedure Code mentions the principle of presumption of innocence which essentially explains a principle regarding the protection of the dignity and worth of individuals who are undergoing a criminal justice process, where they are still considered innocent until they get a legally binding verdict in court.

In addition, they mentioned that the term Miranda Rule is also known. The Criminal Procedure Code contains implicit provisions regarding the Miranda Rule principle's implementations in articles 50 to 68. The Miranda rule is a constitutional right owned by individuals who are undergoing the criminal justice system process, which contains the right not to answer or respond to questions posed by law enforcement officials and the right to be accompanied by a lawyer during the entire process in the CJS. The principle is also stated in the Criminal Procedure Code in Article 18 paragraph (1), where it is explained that every task related to arrests by law enforcement officers must be carried out by showing a letter of assignment, in addition to sending a letter to the individual concerned, which clearly contains the identity of the individual and the reason for the arrest.

However, various cases of wrongful arrests and convictions, which have been recorded in the media or institutions such as the Commission for Missing Persons and Victims of Violence (KontraS) and Legal Aid Foundation (LBH), still occur. Of these cases, the government should not ignore the fact that there are failures of CJS to achieve justice, which causes various adverse effects on citizens who have become victims, as stated in Rahmawati [6].

If this is allowed to continue, people's trust in the government and the CJS may decline, and there is a risk of further negative impacts.

For this reason, formal social control that can function to prevent the occurrence of MOJ is needed. Rahmawati [6] also states that formal social control requires a good and integrated coordination system with the same mindset and perspective.

From this background, the following questions are asked: What is MOJ? Why does it happen? How does it happen? Are there formal social controls that can prevent MOJ in Indonesia?

Therefore, several findings will be presented, namely the redefinition of victims of MOJ, cases of MOJ that occurred from 1995 to 2020 and a brief explanation of the

profile of victims, the existence of structural victimization in MOJ, criminal justice process that leads to MOJ, and formal social controls that can be conducted to prevent MOJ in Indonesia.

## **2. RESEARCH METHOD**

This study is based on a criminological perspective using a qualitative approach to obtain a comprehensive picture of the problems of MOJ in Indonesia. data were collected using primary and secondary data. the primary data collection was carried out by unstructured interviews with 19 informants consisting two groups, selected by the expertise of the informants related to the main topic of this study.

The first group consists of practitioners from the CJS: investigators (5 people), a public lawyer (1 person), a prosecutor (1 person), judges (2 people), and the Head of the Registration Section of the Directorate General of Corrections (1 person). the second group consists of community members from government and non-government organizations serving victims, such as Witness and Victim Protection Agency (LPSK), KontraS, LBH Jakarta, LBH Mawar Saron, Tifa Foundation, Pulih Foundation, and criminology experts.

Interviews were conducted using interview guidelines which consisted of questions related to cases of MOJ that occurred in Indonesia, the process that occurred in the CJS that led to MOJ, who were the victims of MOJ, and what kind of formal social controls are needed to prevent MOJ from occurring.

A secondary data search was conducted by collecting various cases of MOJ obtained from the mass media and the Directory of Decisions of the Supreme Court of the Republic of Indonesia. In addition, secondary data was also obtained from the records of KontraS.

### **2.1. Previous Study**

The previous studies related to MOJ and its relationship with the existence of marginalized people is shown by Grisham [7], who explained that, despite the various impacts faced by victims of MOJ, physically, psychologically, and professionally, where they especially deserving assistance, they have historically been overlooked perhaps because they are predominantly poor, minority and underrepresented in state and local government.

In line with the issue, Greene [8] shows that members of poor and minority groups are less likely than those with higher incomes to seek help when they experience civil law problems.

In the poverty issue, what is worrying is the fact that living conditions are then criminalized. Anti-Poverty

Network of New Jersey [9] suggested that the treatment of homeless people as criminals before the law in several places would trigger a series of events that will only complicate the situation of an individual that is already full of challenges.

Racial issues also have a major contribution to the victimization of the victims of MOJ. Bright [10] sees that race and poverty have become the determinant factors of judicial decisions leading to MOJ, where they are usually represented by lawyers who are alcohol or drug addicts, have a history of mishandling cases, or have been convicted of crimes. Eighteen percent of those sentenced to death have been represented by lawyers who have been disciplined for professional wrongdoing.

MOJ can also be related to punishments that are not in accordance with what they should be. Nichol and Hunt [11] see that there are efforts by the legislative body to pressure judges to impose limits on the penalty sentence in every criminal case, even though the judge has the authority to waive fines and court fees. This was a violation of the independence of the judiciary and left a defendant who was unable to pay to face a high risk of detention.

Therefore, there is a need to improve the quality of apparatus in CJS because it relates to the misconduct they did, leading to MOJ. Gross, et al. [12] states that most of the misconduct was committed by police officers and prosecutors, by forensic analysts in a minority of cases, mostly of rapes and sexual assaults, and by child welfare workers in about a quarter of child sex abuse cases. A range of possible remedies, from specific rules of conduct to changes in national culture, in cities, counties, states, and the nation, are discussed to get answers to reduce official misconduct.

Concerning the MOJ in Indonesia, Kurniawaty [13] sees the issue of law and justice, which is still disturbing. MOJ, in general, is caused by the fact that the raw materials obtained by the police/investigators are not the true truth (*material waarheid*). She states that citizens must be equal before the law, and it is the power that must be subject to the underlying legal arrangements because only the power which is subject to statutory provisions can guarantee and protect every citizen in Indonesia.

Furthermore, regarding the compensation rights that victims of MOJ should obtain, Yuliyanto [14] sees that there are still cases of wrongful arrest or procedural errors in criminal cases causing innocent people to have their rights reduced. He states that it was necessary to facilitate the provision of compensation so that it would go through a fast process, with the determination of the amount made by the judge. The existence of a compensation payment mechanism, which has to be paid through the Ministry of

Finance, which creates guidelines to speed up the process of disbursement of compensation, is needed.

### **3. FINDINGS AND DISCUSSION**

#### *3.1. Victims of Miscarriages of Justice*

In this research, MOJ is an injustice in the legal process so that a certain person or group is considered guilty even though they are innocent. Based on the findings, in MOJ, liberating evidence can appear at any stage in the criminal justice process (relating to investigators, prosecutors, public lawyers, and judges), both ongoing and completed, as mentioned in Rahmawati [6].

Rahmawati also mentions that the victims of MOJ are define as individuals or certain groups who have been named as suspects in a criminal justice system that do not follow the applicable legal procedures, whether they are released during police custody, after the trial period, during a sentence (due to new liberating evidence), as well as those who have finished serving a sentence and are later proven innocent.

#### *3.2. Structural Victimization*

This criminological study is viewed with a theory of structural victimization. Fattah [15] states that structural victimization is a victimization process related to the social structure and power that exists in society. Structural victimization is the emergence of victims rooted in the stratification, values, and institutions that exist in society. The most common form of structural victimization is an abuse of power, such as crimes against humanity.

Structural victimization has no limits. Kiza [16] stated that the difference between structural victimization and other forms of victimization is the many characteristics of various forms of structural victimization, such as war, genocide, tyranny, dictatorship, oppression, repression, torture, suffering, exploitation, discrimination, racism, sexism, ageism, and classism.

Cameron and Newman [17] identified four structural factors in society that can cause structural victimization: economic, social, ideological, and geopolitical factors. Economic factors consist of globalization, poverty, economic decline, and migration movements. Social factors are the existence of social inequality, discrimination based on gender, and discrimination based on age and gender status. Ideological factors are, among others, racism, gender, and cultural stereotypes. It also includes forms of patriarchy in society. Meanwhile, geopolitical factors include war, violent conflict, and military operations. Finally, geopolitical factors can be found in countries experiencing conflict.

These factors, especially economic factors related to class division in terms of work and education, are seen as

important factors in this study, which underlie the occurrence of MOJ in Indonesia. This study found that most MOJ victims came from a minority group, mainly due to socio-economic factors.

In this case, the CJS, with its institutions and apparatus, which should be tasked with protecting the rights of the people, including the rights of suspects, becomes an institution that abuses its authority and power in treating its citizens.

### 3.3. Miscarriages of Justice Cases in Indonesia Targeting Marginalized People

Until now, cases of MOJ can be found in the mass media. There have not been any police records regarding the incidents of wrongful arrests to date. Apart from articles from the mass media, court records can also be seen from the Directory of Decisions of the Supreme Court of the Republic of Indonesia.

However, to see cases of MOJ in the Directory of Decisions of the Supreme Court of the Republic of Indonesia, it is necessary to have knowledge of the number of related cases and various data to be filled in. So, in the end, with these inconveniences, the mass media remains the main source of secondary data. Another supportive source is obtained from case notes at several non-governmental organizations that handle cases related to MOJ.

Due to these difficulties, it is not possible to know the accurate record of how many cases of MOJ are in Indonesia. Below are cases of MOJ that can be collected from the mass media from time to time, as well as some cases obtained from KontraS' report [18], [19], [20], [21], [22], [23], [24], [25], [26], [27], [28], [29].

In addition, secondary data was also obtained from the Directory of Decisions of the Supreme Court of the Republic of Indonesia [30], [31], [32], [33], [34], [35], [36], [37], [38], [39], [40], [41], [42], [43], [44].

**Table 1.1. Miscarriages of Justice Cases in Indonesia 1995-2020**

No	Year	No of Victims	Class (based on education and occupation)			Minority Group
			Higher	Middle	Lower	
1	1995	3			3	
2	1996	1			1	
3	1997	1				1
4	2000	1			1	
5	2002	4			3	1
6	2005	3		3		
7	2006	1			1	
8	2008	3		3		
9	2009	5	1		4	
10	2011	5			4	1
11	2012	25			24	1
12	2013	9	1		8	
13	2014	8			5	3
14	2015	12		2	6	4
15	2016	2				1
16	2017	4			2	2
17	2019	2			1	1
18	2020	4		4		
19	Unknown	18		1	3	14
	<b>Total</b>	<b>112</b>	<b>2</b>	<b>14</b>	<b>62</b>	<b>29</b>

Information:

1. The 2002 victim, accused of murdering his father, was the son of an ethnic Chinese businessman. Even

though he is supposed to be a member of the upper economic class, he comes from an ethnic minority group. At that time, the atmosphere of the 1998 reformation was still very influential, and due to the social disparities, the Chinese ethnic group became a common enemy of society and were vulnerable to violent crimes.

2. The victim in 2009, who was categorized as an upper class (in terms of education and social status in society), sued three policemen who beat him and succeeded. Those police officers were then sentenced to three months in prison.
3. Upper-class victims of 2013 (in economic terms) received compensation on an ad hoc basis in the form of hospital fees, car replacement, and formal apology from the police institution.
4. The 2016 victim comes from the middle class, but she came from a minority religious group, while the case she was accused of was related to religious disparities.
5. Four victims in 2020 were students. So, in terms of status, they are categorized into the middle class. However, their status as students also made them vulnerable to violence that may be perpetrated by the police.

From the table, it can be seen that of the 112 victims of MOJ, 62 of them were from the lower class. So, it can be seen that of all the victims of the MOJ, the majority of victims (55%) are from the lower classes of society.

In addition, there were two victims who, despite coming from the upper or middle class, were part of the minority group, related to the time and place of the case. Thus, the treatment of officers from the CJS towards them is not different from that of the lower-class society.

This is an indication that someone could become a victim of MOJ in Indonesia because of their status as a racial or religious minority. However, due to a lack of data, further research needs to be carried out.

Meanwhile, of the two victims who are categorized as the upper class, there were differences in the treatment shown by the authorities, where appropriate compensations were given to one victim, and the demands of punishment for the apparatus who perpetrated the miscarriages justice were granted for another victim.

### 3.4. Miscarriages of Justice Process in Indonesia

Although not always structured like this, from the results of data collection based on information from the informants, the MOJ processes that generally occur in Indonesia are as follows:

1. Initially, a case can arise at any time. If the arrest is based on the complaint offense, then whether the case will be continued or not will depend on the authority of the person who reported the case and also on the

benefits that the investigator will get if he/she continues the case.

The reported cases are then considered as targets for investigators to resolve. However, a large number of cases and a shortage of investigators have caused problems in the quality of case handling. Although the time of investigation is not limited to the same period as the research period, the lack of various means, funds, and low quality of investigators – while investigators are required to immediately determine the suspect responsible in the case – could make the determination of suspects carried out without a comprehensive investigation.

In cases where the cause is unclear, such as the case where the crime scene has been damaged, the investigation usually does not use a scientific approach, and the investigator is reluctant to dig deep into the case, errors in determining the suspect can occur.

2. After the suspect is named, witnesses can be sought for their testimony, but there are times when witnesses can be pressured into giving false information about the suspect, thus accusing an innocent person of being the perpetrator of the crime.
3. Furthermore, in order to shorten the time, without an arrest warrant, and only based on the unreliable witness testimony, an arrest may be made on the person under suspicion.
4. During the arrest process, torture or even shooting of the suspect may occur.
5. When the suspect is arrested, the investigator does not present a public lawyer for them, even though the charges imposed can carry a sentence of up to five years. Some suspects were even pressured to sign a refusal of public lawyers. If a public lawyer is present, the public lawyer could be pressured not to provide a maximum defence; else, they would be barred from service in the future.

There are even times when public lawyers, working without operational funds, accept bribes to yield in certain cases, especially those arising from a complaint offense or involving drugs.

6. The interrogation process can take more than 24 hours, or 72 hours for drug cases, without public lawyers.

Investigators, who are tired and pressured by the limited time of investigation, often carry out torture to obtain a suspect's confession and can provide fabricated reports and evidence to make it easier for cases to be submitted to the prosecutor's office, compiled in the Investigation Report (*Berita Acara Pemeriksaan - BAP*).

7. When the police submit the warrant for the Notification Letter of Commencement of Investigation (SPDP) to the prosecutor's office, the

assigned prosecutor simply accepts the file because they are not allowed to reject the case.

There are times when prosecutors who have questions related to certain issues return the case files to the police to be completed (P19). However, these files are often only answered in writing, and sometimes the investigator can even put pressure on the prosecutor to immediately bring the case to court.

8. In some cases, the media can be involved by the police to put pressure on the prosecutor because they are considered to slow down the judicial process.
9. In the end, the prosecutor who did not have a check and balance mechanism, did not directly check the crime scene, or did not collaborate with investigators to carry out investigations, takes the case to court.
10. The court, which cannot reject a case, no longer conducts an examination of the incoming files. There are even times when Community Research (Litmas) is not carried out to further examine the case in cases involving children.
11. In court, a judge who may not reject a case leads the trial process by only listening to and trusting input from the prosecutor without examining files, only based on the prosecutor's indictment.

The judge often ignores other facts at trial, including when the suspect withdraws the BAP and mentions torture in the investigation process.

12. The judge's attitude towards the accused could be influenced by the inputs from the prosecutor regarding the indictment. In the trial process, led by a panel of judges, there may be dissenting opinions between the three judges, but this has not had a major impact on the continuation of the judicial process. Basically, in the panel of judges, all judges will tend to approve the decision of the Chief Judge.

However, in some court processes, cases that should be presided over by the Panel of Judges, such as cases involving children, are presided over by a single judge so that the objectivity of the court process is not maintained.

The judge decides by looking at two pieces of evidence (which become facts in court, including input from expert witnesses) and the element of belief. In this case, the element of belief is a subjective element and depends on the situation and condition of the judge when making a decision.

13. Expert statements, whose knowledge does not come from legal knowledge, may fail to be understood by judges, which can lead to misunderstanding.

In addition, because the prosecutor has influenced the judge's background knowledge on the accused, the judge can make hasty decisions to shorten the court process; for example, only two sessions, then the sentence is handed down.

14. In cases where the prosecutor and judge see that the defendant is not guilty, the guilty verdict is handed down. This is done to avoid the further impact of the release of the defendant, namely the submission of a Pre-trial (as a request for compensation for losses that have been experienced).

In addition, the passing of a guilty verdict is also an effort to avoid further problems that can be experienced by the judiciary and the judge him or herself, along with other elements of the CJS, such as administrative sanctions from their respective institutions (although there is no evidence to show that there are any sanctions ever executed), as a punishment for having carried out an MOJ.

15. The defendant, who later became a convicted prisoner, serves a period of detention in prison (the only sentence currently available is imprisonment).

When a prisoner reports an incident of wrongful conviction to prison with the evidence they have, or new evidence (novum) in their possession, a prison that does not have a standard operating procedure (SOP) for complaints of wrongful conviction, in its discretion, can only try to report cases of wrongful arrest and wrongful punishment of convicts to related institutions.

However, in most cases, prisons do not file the report. Instead, prisons only receive prisoners and provide guidance according to their duties until the prisoners have finished serving their sentences.

The followings are additional information from the informants. In the process at the police institution, victims of MOJ who are proven innocent are only released from police custody without any compensation, and some are even threatened not to file charges.

Only in a few cases have the police taken an ad hoc approach to compensate the suspect. Moreover, several informants mentioned that there were cases where the status of a person as a suspect was not revoked without clarity of time, even though the evidence had led to innocence.

In court proceedings, the accused can be given a verdict of innocence and be released from punishment; however, there are times when victims who are found not guilty in the District Court are found guilty in the High Court, which indicates that there are efforts to avoid further consequences such as requests for compensation. In fact, the most pronounced verdicts are guilty verdicts, with light sentences so that the victim can be released immediately.

There are also cases where the victim was found guilty by the District Court with a light sentence, but when he filed an appeal, the High Court judge added to the sentence. In this case, there are also indications that this action was taken to stop the defendant's attempts to appeal.

Until now, the most difficult thing to do, is to remove the victim from the correctional facility, especially when all attempts to file a judicial review (PK) and clemency have been rejected.

Victims, who filed a Pre-Trial suit after finishing serving their sentence, may experience many obstacles in obtaining compensation. These obstacles, among others, are: getting rejected (such as on the grounds that the Pre-trial filing period has passed), the compensation provided is not in accordance with the impacts that have been experienced, or the submission process is convoluted and takes a long time.

The process that a victim of MOJ has to undergo is an ongoing stage, in which the victim seems unable to defend him or herself. Even when all the evidence points to the innocence of the victim, the state apparatus actually tries to maintain its position by making a guilty verdict on the victim. The aim is to prevent the state and its apparatus from being negatively impacted by the mistakes they have committed.

Thus, there are indications that CJS officials tend to think more about and protect their own interests than the interests of victims of miscarriages of justice who have experienced suffering due to the mistakes in the criminal justice process.

### *3.5. Formal Social Control of Miscarriages of Justice*

From the findings obtained, two changes must be made to prevent the occurrence of MOJ, namely changes in the system and human resources. Human resources change is divided into changes in elements of the CJS and changes in society. The following are the findings obtained from interviews with various informants.

#### *3.5.1. System Change*

Regarding MOJ, the need for legal changes is something important. In this case, the Criminal Procedure Code (KUHAP) is the most crucial change to be made. In the current KUHAP, the rights related to victims receive very little attention compared to the rights of suspects. Therefore, it is necessary to change the law that pays more attention to the rights of victims, including victims of MOJ.

In addition to the changes of KUHAP, changes to the Criminal Code (KUHP) are also needed, especially for certain cases that are no longer in accordance with their time, while these cases can become the basis for the punishment of judges. This can result in imposing penalties that are not appropriate in the current situation. For example, in the case of a maximum penalty period for theft that is higher than the maximum sentence for embezzlement/fraud, which should be reversed if calculated in the present.

In carrying out the function of control for investigators, monitoring must be carried out on the track record of investigators to see the possibility of many cases of violations that have been committed, leading to MOJ. Wherever MOJ happens, reporting has to be done, which will affect the investigator's career in the future.

Investigator certification must be carried out to become a quality control for investigators in carrying out their duties. According to the informant's statement, the police are currently drafting a regulation by the Indonesian Police Chief regarding investigator certification.

In handling cases by the police, it is necessary to carry out an official Preliminary Hearing (*Gelar Perkara*) before submitting a case to court. According to the informant's statement, in *Gelar Perkara*, investigators, experts who can provide input, as well as other units that can correct what has been done, must be present.

Pre-trials must be carried out before the trial to see the initial mistakes in handling the case. According to the informants, Pre-trials, seen from its literal meaning, is a *Pro Justitia* process, namely a process before the official legal process takes place, before the trial. Thus, unless a perpetrator is caught red-handed, before detaining or arresting a suspect, the police must first ask permission from the court, instead of arresting first, then after an error occurs, Pre-trials later.

There is a need for a special division that deals with cold cases, which are not time-limited, to prevent carelessness in handling cases. This is in accordance with what was mentioned by the informants that the Cold Case division is needed to prevent carelessness that results in wrongful arrests or other carelessness caused by the various limitations investigators have to face.

An examination must be carried out regarding every mistake in the judge's decisions in the CJS in Indonesia. The informants said that the Examination must become a tradition in Indonesia, must be carried out by scientists, and published in journals. Furthermore, because the results of the investigation in the Examination cannot change the court's decision, it will be a negative conduct note for the judge on duty, especially if there is a dissenting opinion in the decision.

All input from the Examination must be integrated. Then, although it cannot change the decision, at least PK efforts can be made, or it can be a consideration for the President to grant amnesty, abolition, or clemency for victims who have been proven to have suffered from an MOJ, where compensation can also be given.

A Truth and Reconciliation Commission (KKR) can be established to handle cases that constitute a violation of human rights. This is consistent with the informant's statement that in the CJS, the state should create a judicial scheme called the KKR to reconcile human rights violations.

The Ombudsman can be an institution that oversees and imposes legal sanctions on public officials. According to the informant's statement, the Ombudsman can become an adjudication institution. The Ombudsman can punish public officials who do not carry out their duties and harm society.

### *3.5.2. Human Change*

Changes in the elements of the CJS are important. This is in accordance with the input of the informant, who said that the problem is not the system, but the people, and sometimes the system is good, but the implementation is often not in accordance with the prevailing procedures.

To achieve a truly fair and clean trial, fundamental changes in the character of the people are needed, both in the elements of the CJS and society. This was reinforced by the statements of other informants who said that the most important thing was not the system but the people. The system can be good, but if the one running the system is not good, then the system will also be bad. The system will be stronger and guarantee justice if the actors in it have integrity.

Society change also needs to be done. An informant stated that the Indonesian people are still clueless about the law so that they are vulnerable to becoming victims of MOJ. In addition, most of those who experience MOJ also come from minorities, so they do not know that there are efforts that can be made, either to keep them from being wrongfully arrested and tortured or to claim their rights after they are proven innocent. This statement was strengthened by another informant who stated that in Indonesia, the intellectual level of the people is still low.

The following are suggestions obtained from interviews with informants.

#### *3.5.2.1. Changes of the Elements in the Criminal Justice System*

There are five elements in the CJS, namely Investigators, Prosecutors, Public Lawyers, Judges, and Prison Officers, as mentioned in Rahmawati [6]. Changes in the character of the CJS officers can be started from the recruitment system. There must be a recruitment system that follows the correct rules, meets the requirements, and is of quality, especially if the person is placed in an area that is difficult to supervise.

Because Indonesia still adheres to the Dutch legal system, the judge recruitment system in the Netherlands can be a suggestion for maintaining the quality of judges. In the Netherlands, judges are recruited from the start, selected from only the top ten universities, and graduate in the top ten of their respective classes. The aim is to maintain the quality of judges.

In carrying out their respective duties, there must be a collaboration between each element. The relationship between investigators and prosecutors must be based on professional, not institutional, relationships. With professional relationships, every existing problem will be resolved in a legal manner without creating a rivalry between institutions.

Training must be carried out with all elements of the CJS and related institutions to create collaboration and eliminate sectoral egoism attitudes between elements. Formal social control requires a good coordination system, integrated, and with the same mindset and perspective. For example, a meeting forum or joint training could be carried out between elements in the CJS and related institutions.

Related institutions must conduct supervision as best as possible and thoroughly and continuously so that the quality of case handling is truly maintained. In the supervision of elements of the CJS, according to the informant's statement, several things can be done to prevent the occurrence of MOJ by the authorities, namely: 1) Official Gelar Perkara, in which errors in case handling can be seen; 2) Pre Trial to supervise the progress of the case; 3) supervision that can be carried out by taking into account the track record of the investigator; 4) a certification program that really looks at the quality of investigators, and; 5) Examination that can see the judges' negative conduct records and affect their career.

Meanwhile, when violations occur, there must be legal sanctions imposed to provide deterrence and serve as an example for other officials to avoid making the same mistake. In the event that there is a procedural error committed by the apparatus, which causes the MOJ, it is necessary to have sanctions for the investigator, public prosecutor, or judge affecting their career record; the remuneration received, for example, is deducted to provide compensation for victims of MOJ so that they could no longer be allowed to take refuge in their immunity as it is today.

In addition, there is a need for good leaders to be able to direct elements in the CJS towards a good direction. The formal social control of MOJ can be exercised if the CJS in Indonesia has a good role model. If the role model is good, then all will follow the example. The prosecutor's office, for example, is an organization that operates with the example of a role model; thus, there must be a person at a high level who can become a role model.

### 3.5.2.2. *Changes in Society*

Although it seems utopian at the moment in Indonesia, from a criminological perspective, community development is an important point in preventing the

occurrence of MOJ. It is necessary to increase the legal knowledge of society, and it must start from an early age, where the social system must take control.

As a suggestion, it is important to educate civil society about the legal process they would face and how to help their selves if they have to come into conflict with the CJS or face MOJ, for example, knowing what to do if faced with a false allegation and where to turn for legal assistance.

The legal knowledge could be shared through integral education in schools, which can be included in certain subjects, such as social science or civics (IPS). Again, the social system must be the controller in providing this education.

## 4. CLOSING

As mentioned in the Introduction, the occurrence of MOJ in Indonesia can pose a risk of losing public trust in the CJS in particular and the country in general. This loss of trust can create potential future conflicts. Whereas human resources should be a part that helps, in quantity and quality, the progress of the nation.

To restore this trust, it is necessary to plan for a clear and planned compensation system for victims of MOJ. Thus, they will feel that the country is concerned about their future survival. In addition, it is also necessary to reanalyse the procedures in the CJS to see and plan a better process in tackling crimes so that the possibility of MOJ can be prevented and maximally reduced.

In the existing proposals for formal social control, several things can be done at this time by adjusting with the existing situation:

- In the case of a public attorney's income, which depends on the case, a monthly income system can be calculated to improve the performance of public lawyers.
- In terms of the lack of quality of the apparatus in handling cases scientifically, recruitment can be carried out using a system that is not nepotistic and corrupt but looks at the quality of the individual.
- In the event that officials lack knowledge of evidentiary and legal issues, various training can be given to improve the quality of the apparatus.
- In the case of a sectoral egoism, joint training must be carried out and attended by all elements and provide the necessary knowledge, which can also increase collaboration and eliminate sectoral egoism attitudes.
- In terms of fulfilling the rights of a suspect, where the crime of which he/she is accused carries the threat of a sentence of more than five years, public lawyers at the Legal Aid Post (Posbakum) must really work in accordance with the SOP.
- In terms of supervision, the existing supervisory bodies must function properly, such as the Division



of Profession and Security of Indonesian Police (Propam) for investigators, the Indonesian Advocates Association (Peradi) for public lawyers, the Prosecutor's Commission for prosecutors, and the Judicial Commission for judges.

Finally, there is a need for collaboration and integration that will determine the success of this formal social control. Without the cooperation of all parties, with the same perspective, change will not succeed in achieving its goals. In this case, to prevent the recurrence of cases of MOJ, which, in a sense, indicates the low quality of the CJS in Indonesia.

## 5. FURTHER STUDY

From the results of the study, it was found that one of the efforts that could be made to deal with victims of MOJ was by providing compensation according to the negative impact on the victim, which was calculated to the extent to which the victim was found not guilty. Compensation must be calculated and included in a separate state budget so that it can be used when cases of MOJ occur.

One of the government agencies that handle victims is the Witness and Victim Protection Agency (LPSK). However, until now, LPSK has not served victims of MOJ. This is due to the status of victims of MOJ as perpetrators of crime, and their existence is not listed in Law Number 13 of 2006 concerning Protection of Witnesses and Victims, and Law Number 31 of 2014 concerning Amendments to Law Number 13 of 2006 concerning Witness and Victims Protection.

By placing victims of MOJ as victims who must receive LPSK services, there are two positive impacts that can occur. First, victims will receive attention from the state, and the state will provide more certainty to victims regarding compensation for the negative impacts they have suffered. In addition, because LPSK provides various types of physical and psychological services, the compensation for the negative impacts experienced by the victims is more thorough, not only in financial aspects but also psychological, work opportunities, etc.

Second, with the assurance that there is state responsibility for mistakes committed by elements of the CJS, the state will also put pressure on the CJS not to make mistakes that could ultimately turn to harm itself, both financially and socially.

With clear and appropriate compensation, the trust of victims in the CJS and the state, damaged due to MOJ, can at least be restored, as can the trust of the wider community in these two institutions.

Thus, human resources can be utilized properly by the state. This is a positive impact of the increasing public trust because the state pays attention to the survival of every citizen, including those who have experienced the consequences of mistakes committed by officials in the CJS.

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