

Implementation of Suspect and Accused Rights in the Indonesian Criminal Justice System (Study Case in Jayapura)

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Abstract

Some cases of violence conducted by law enforcers show in somehow the rights of the suspect and the accused are ignored. Those violence can be seen in the cases of the Marsinah case, the Tjetje Tajudin case, the murder case of Bernas journalists, the Tanjung Priok case, the May 14 riots, the 27 July incident, the shooting of Trisakti students, the kidnapping of activists, the November 13 1998 riots (Semanggi tragedy), Situbondo, Ciamis and Purwakarta riots, Ujung Pandang case, Timika case, re-disclosure of legal violations such as military operations areas (DOM) in Aceh. Based on the finding of the research, it can be said that implementation in fulfilling the rights of suspects in Jayapura has not been able to run optimally because there are still many rights of suspects are ignored in accordance with the Criminal Procedure Code and international instruments such as UDHR, ICCPR, and CAT. The influenced factor of the enforcement of the law to keep the suspect and the accused rights can be seen in the forms of substance of law, law enforcer, facilities, and culture of law. Improving the ability and knowledge of the police (investigators) in the field of education and skills in order to be more professional in carrying out their duties and authorities. The concretize of some efforts to protect the suspect and the accused can be seen in the context of improving preventive and repressive functions in carrying out tasks law enforcement; increasing strict supervision on the implementation of police duties, especially in law enforcement, by giving sanctions to violating members; adding facilities in the implementation of law enforcement duties.; improving the police officer welfare; improving better work mechanism; etc.

Keywords: Rights of Suspect and Accused, Indonesian Criminal Justice System

1. Introduction

The structure of handling criminal acts in the Indonesian criminal justice system is governed by the Law Number 8 of 1981 concerning the Criminal Procedure Code (abbreviated as KUHAP), which consists of the investigation subsystem, prosecution subsystem, and court subsystem. In the stage of investigation, the criminal law enforcers are carried out by the investigator (police / Civil Servant Investigator - PPNS); in the prosecution stage, then, is carried out by the public prosecutor, and in the court, the stage is carried out by judges and lawyers. Those link amongst the law enforcers are known as criminal justice system.¹

In the criminal justice process, there is something that is often forgotten, namely the role of witnesses and victims in a criminal event. The existence of witnesses and victims has been submitted entirely and represented by investigating officials, lawyers, and public prosecutors. It cannot be denied that the substance of a criminal event is materially more determined by the role of witnesses and victims, especially in terms of proof of a criminal event. In reality on the ground witnesses and victims, they often get pressure from people with an interest in criminal events.² According to Frederich Julius Stahl, one of the important elements of the rule of law is the existence of legal protection for human rights.³ Similarly, the International Commission of Jurist stated, in the 1955 Athens Pledge of ICJ, that one of the main principles of the rule of law is that the Government must respect individual rights under the rule of law.⁴

In Indonesia, the problem of law enforcement often gets sharp scrutiny from various parties such as justice seekers, communities, Non-Governmental Organizations, mass-media, academics, or scholars. Even the sharp spotlight has shaped pressure on law enforcement officials. In the context of the police, the sharp spotlight occurs because of the phenomenon that law enforcement officials often deviate in carrying out their noble duties. In somehow, the police are considered to do some action in contrary to the sense of justice of the community.⁵ It is starting from mild to severe violations that are colored by violence in handling suspects. Forms of violations often occur for example the arrest procedure by the investigating apparatus without showing a task warrant as appropriate as the arrest stipulated in the Criminal Procedure Code. Another violation is a suspect who is not

¹Siswanto Sunarso, *Victimology in the Criminal Justice System* (Viktimologi dalam Sistem Peradilan Pidana), Sinar Grafika, Jakarta, pp.6-7.

²Ibid.

³Bambang Waluyo, *Law Enforcement in Indonesia (Penegakan Hukum di Indonesia)*, Sinar Grafika, Jakarta, 2016, p.2.

⁴Ibid.

⁵Moh. Hatta, *The Collection of Criminal Law Reform and Criminal System (Kapita Selekta Pembaharuan Hukum Pidana dan Sistem Pemidanaan)*, Liberty, Yogyakarta, 2016, p.107.

given the opportunity to simply bring a change of clothes, but the suspect is immediately taken to a certain place, and if necessary by force; or the suspect who is not given the opportunity to just meet family first, as experienced by the suspects in the Marsinah murder case¹ and in the abduction of pro-democracy activists. Examiners often try to eliminate their tracks.² According to Satjipto Rahardjo as quoted by Moh. Hatta³ that the origin of negative police behavior may be traced to the transfer of power given to the police (in the form of functional discretion) and the opportunity factor when they are in the community.

At the prosecutor office, the sharp spotlight and criticism also come from the public and others, who considered that the prosecutor's institution had been less professional in carrying out their duties and authorities, especially in handling cases. It was proven that there was a young Attorney General involved in accepting bribes in Anggoro and Anggodo cases.⁴ Likewise, the ranks of the court do not escape the spotlight and criticism because of the phenomenon of court decisions which sometimes causes controversy in the community which later turned out to act of collusion, corruption and nepotism.⁵

Before the Anggoro and Anggodo case took place, law enforcers have committed many violations of the law. No less than 194 cases of legal violations occurred in Indonesia from 1995 to 1996. A total of 43 cases occurred against political figures, 33 cases against students, 69 cases of blocking, 27 licensing cases, 38 cases against organizations, and 34 cases against art.⁶ Not to mention the violations up to 1999 which were recorded as tragedies for the Indonesian people. A series of cases of violence by law enforcers that received serious attention were the Marsinah case⁷, the Tjetje Tajudin case, the murder case of Bernas journalists⁸, the Tanjung Priok case, the May 14 riots, the 27 July incident, the shooting of Trisakti students, the kidnapping of activists, the November 13 1998 riots (Semanggi tragedy)⁹, Situbondo, Ciamis and Purwakarta riots, Ujung Pandang case, Timika case, re-disclosure of legal violations such as military operations areas (DOM) in Aceh¹⁰, and various other violations.¹¹

The Law Number 8 of 1981 concerning Criminal Procedure Law (KUHAP) is a form of legal renewal that has appointed and placed his entity and dignity as a human being. In connection with this matter, absolute law enforcement must be in line with human rights issues, especially a suspect and accused right. Since the enactment of the Criminal Procedure Code, the suspects or accused are given the right to protect themselves from the arbitrariness of law enforcers as stipulated in Chapter VI concerning Suspects and the Accused starting from Articles 50 to Article 68 of the Criminal Procedure Code. The rights of the suspect and the accused are actually sufficient to provide protection for the suspect or the accused compared to the criminal procedural law during the Dutch occupation (Het Herzien Inlandsch Reglement / HIR). However, it cannot be denied that human rights which have been expected and upheld are still not fully realized, because they are still influenced by various forms of violations of the law.

Regarding those discussed as mentioned, the focus of this study is how to protect the rights of suspects and the accused in Jayapura; and what efforts are made in order to protect and respect the rights of suspects and the accused in Jayapura.

2. Research Methods

The research approach used in this study is an empirical juridical approach. This approach theoretically views the rights of suspects and the accused in the Criminal Procedure Code and is practically implemented by the

¹ Yayasan Lembaga Bantuan Hukum Indonesia (YLBHI), *Violation during Inverstigation in Marsinah Case, (Kekerasan Penyidikan Dalam Kasus Marsinah)*, YLBHI, Jakarta, 1995, pp. 13-14.

² See Majalah Berita Mingguan UMMAT No. 3 year IV 27 July 1998, PT. Mahkota Mediatara Utama, Jakarta, 1998, pp. 15-16.

³ Moh. Hatta, op.cit. p. 108.

⁴ Ibid. p. 109.

⁵ Heri Tahir, *the Fair Legl Process in Indonesian Criminal Justice System (Proses Hukum Yang Adil Dalam Sistem Pewradilan Pidana Di Indonesia)*, LaksBang PRESSindo, Yogyakarta, 2010, p.96.

⁶ Eggi Sudjana, *Human Rights, Democracy, and Environment in Islamic Perspectives (HAM Demokrasi dan Lingkungan Hidup Perspektif Islam)*, Yayasan As-Syahidah, Jakarta, 1998, p. 3.

⁷ Yayasan Lembaga Bantuan Hukum Indonesia (YLBHI), op.cit, pp.85-86.

⁸ Anonim, *Human Rights in Title (Hak Asasi Dalam Tajuk)*, Institut Ecata-INPI-Pact, Jakarta, 1997, p. 34.

⁹ See Majalah Berita Mingguan "GATRA", Edisi No.36 of IV 25 July 1998, PT. Era Media Informasi, Jakarta, 1998, pp. 24-33.

¹⁰ Sukandi A.K. (ed.), *Violence Politic in New Era; does it continue? (Politik Kekerasan ORBA Akankah Terus Berlanjut?)*, Mizan Pustaka, Bandung, 1999, p. 16.

¹¹ Moh. Hatta. Loc.cit.

police in carrying out arrests, detention of suspects at the level of investigation in Jayapura, and some occurring violations during the investigation process (arrest, detention) and prosecution.

The type of qualified data in this study is primary data and secondary data. The primary data is obtained directly from respondents consisting of 30 suspects, 3 police officers (investigators), 3 prosecutors, 2 judges, 3 prison officials, and 2 lawyers in Jayapura. The secondary data further consists of legal material or pre-existing documents such as journals, laws, legislation, jurisprudence,¹ official government documents (statistics), international documents, personal documents, research results, and opinions of legal experts.² The collected data are then analyzed qualitatively, in which the opinions of respondents and resource persons including their treatment thoroughly researched and studied. The respondents' opinions are then interpreted in a quality manner by describing them in complete and detailed aspects to reveal and understand the truth.³

3. Implementation the Rights of the Suspect and the Accused

3.1 The Findings

a. Perception of the Suspect on Fulfillment Rights

Based on the results of the research obtained from interviews with 30 suspects in Class II A of Abepura Correctional Institution, the fulfillment of the rights of suspects can be explained in the table below.

Table 1
 Police Bring Duty Orders and Arrest Warrants in Arresting Suspect
 Source: Primary Data Tabulation, 2018

No.	Answer	Frequency	Percentage
1.	bringing duty orders and giving arrest warrants	6	20 %
2.	Do not bringing duty orders and giving arrest warrants	21	70 %
3.	etc	3	10 %
Total		30	100 %

Table 1 shows that 6 people (20%) answer that the police in carrying out arrests bring a duty warrant and give an arrest warrant. One respondent answer that there is a mistake of name typing when the police bring a duty warrant and give an arrest warrant. The police promise to correct the mistake after the suspect arrived at the police station. A total of 21 people (70%) answer that the police at the time of arrest do not carry a duty warrant and do not provide an arrest warrant. Of the 21 people, 3 people are caught by hand, and 5 people are subjected to police raids, while the remaining 13 people answer the police do not carry a duty warrant and do not give an arrest warrant. Respondents who answered 3 others (10%), namely because they do not know, are afraid to ask questions, and are not given the opportunity to ask the police when they are arrested.

Table 2.
 Behavior and Attitude of the Police in Arresting the Suspects

No.	Answer	Frequency	Percentage
1.	Good	-	0 %
2.	Bad	30	100 %
Total		30	100 %

Source: Primary Data Tabulation, 2018

Table 2 shows that police attitudes and behavior when arresting suspects are not good. According to respondents, the police often behave harshly, treat suspects inhumanely, impose their will, harass, deceive suspects, humiliate suspects in front of their family or community, and beat them.

¹ Soerjono Soekanto dan Sri Mamudji, *Normative Legal Research (Penelitian Hukum Normatif)*, CV. Rajawali, Jakarta, 1985, p. 14.

² Ronny Hanitijo Soemitro, *Legal Research Methodology (Metodologi Penelitian Hukum)*, Ghalia Indonesia, Jakarta, 1982, p. 24.

³ Ibid.p.93.

Table 3.
 The Right to Get Investigation Immediately

No.	Answer	Frequency	Percentage
1.	On time detention	-	0 %
2.	Extended detention	30	100 %
Total		30	100 %

Source: Primary Data Tabulation, 2018

Table 3 indicates that all the respondents (100%) answered that their right to get investigation immediately is not provided. It was a period of extended detention, and often the suspect does not know exactly when the case will be transferred to the public prosecutor.

Table 4.
 The Right to be Notified on Suspicion In Understanding Languages

No.	Answer	Frequency	Percentage
1.	Yes	30	100 %
2.	No	-	0 %
Total		30	100 %

Source: Primary Data Tabulation, 2018

Table 4 indicates that all respondents (100%) has been notified on suspicion in understanding languages.

Table 5.
 The Right to get Interpreter

No.	Answer	Frequency	Percentage
1.	Yes	30	100 %
2.	No	-	0 %
Total		30	100 %

Source: Primary Data Tabulation, 2018

Table 5 indicates that all respondents (100%) has been given their Right to get interpreter if the suspects do not understand Indonesian language.

Table 6.
 The Right of the Suspect to Give Information freely in front of the Police

No.	Answer	Frequency	Percentage
1.	Given	-	0 %
2.	Not Given	30	100 %
Total		30	100 %

Source: Primary Data Tabulation, 2018

Table 6 shows that all respondents (100%) have not given the freedom to give information in front of the police. Respondents felt pressured by the investigator, feared, and forced to answer every question asked.

Table 7.
 Behavior and Attitude of the Police during the Suspects Investigation

No.	Answer	Frequency	Percentage
1.	Good	-	0 %
2.	Bad	30	100 %
Total		30	100 %

Source: Primary Data Tabulation, 2018

Table 7 points the attitude and behavior of the police is bad in examining suspects. All suspects stated that they had been shackled, beaten (beaten with a hose, the handle of a gun), hung 5 chairs in their necks, and shocked. Female respondents have been treated indecently and get insults.

Table 8.
 Discrimination in Suspects Examination

No.	Answer	Frequency	Percentage
1.	Yes	21	70 %
2.	No	9	30 %
Total		30	100 %

Source: Primary Data Tabulation, 2018

Table 8 explains that 21 people (70%) are treated differently from others (such as foreigners and suspects who have connections with the police). 9 people (30%) answered that there was no discrimination from the police.

Table 9.
 The Suspect Understand those Rights in KUHAP

No.	Answer	Frequency	Percentage
1.	Understand	1	3,33 %
2.	Do not understand	29	96,67 %
Total		30	100 %

Source: Primary Data Tabulation, 2018

Table 9 shows that only 1 (one) suspect (3,33 %), student, understands his/her Rights and 29 respondents (96,67 %) do not know his/her rights, in which their level education is 15 of them graduates in Junior High School and 14 respondents are Senior High School.

Table 10.
 The Right to Obtain Legal Aid

No.	Answer	Frequency	Percentage
1.	Yes	30	100 %
2.	No	-	0 %
Total		30	100 %

Source: Primary Data Tabulation, 2018

Table 10 states that all respondents (100%) has been given the right to get legal aids.

Table 11.
 The Police Ask the Suspects on the Right to Get Legal Aid
 Or Accompanied by a Lawyer Before Being investigated

No.	Answer	Frequency	Percentage
1.	Asking before	30	100 %
2.	No asking before	-	0 %
Total		30	100 %

Source: Primary Data Tabulation, 2018

Table 11 shows that all respondents (100%) has stated that they have been asked before being investigated to get legal aid or be accompanied by a lawyer.

Table 12.
 During investigation By Police Accompanied by Lawyers

No.	Answer	Frequency	Percentage
1.	Yes	-	0 %
2.	No	30	100 %
Total		30	100 %

Source: Primary Data Tabulation, 2018

Table 12 states that all respondents (100%) are not accompanied by the lawyer.

Table 13.
 The Reason to not use a Lawyer

No.	Answer	Frequency	Percentage
1.	Expensive (cannot pay)	21	70 %
2.	distrust	2	6,67 %
3.	etc	7	23,33 %
Total		30	100 %

Source: Primary Data Tabulation, 2018

Table 13 illustrates that 21 people (70%) did not use lawyers because they were unable to pay, 2 people (6.67%) did not trust lawyers, and 7 people (23.33%) did not know or influenced by the police to not use the lawyer because of the case lawyers' services will be processed for a long time or the procedure is confusing (complicated), and/or afraid of the police.

Table 14.
 Rights to be Notified by an Authorized Officer to His Family
 for Detention of Himself

No.	Answer	Frequency	Percentage
1.	Notified	30	100 %
2.	Not Notified	-	0 %
Total		30	100 %

Source: Primary Data Tabulation, 2018

Table 14 indicates that all respondents have been notified by authorized officer to his family for detention of himself

Table 15.
 The Right to Contact and Receive Visiting from Other Parties
 to Get Guarantees for Suspension of Detention or Legal Aid

No.	Answer	Frequency	Percentage
1.	Yes	30	100 %
2.	No	-	0 %
Total		30	100 %

Source: Primary Data Tabulation, 2018

Table 15 indicates that all respondents have been given the right to contact and receive visiting from other parties to get guarantees for suspension of detention or legal aid.

Table 16.
 The Right to Receive Family's Visiting during the Detention

No.	Answer	Frequency	Percentage
1.	Given	30	100 %
2.	Not Given	-	0 %
Total		30	100 %

Source: Primary Data Tabulation, 2018

Table 16 indicates that all respondents have been given the right to receive family's visiting during the detention.

Table 17.
 The Right to Receive or Call Private's Doctor during the Detention

No.	Answer	Frequency	Percentage
1.	Given	-	0 %
2.	Not Given	30	100 %
Total		30	100 %

Source: Primary Data Tabulation, 2018

Table 17 indicates that all respondents have not been given the right to receive or call private's doctor during the detention in some cases when they get injured and need to be cured by the Doctor.

Table 18.
 The Right to Receive or Send a Letter during the Detention

No.	Answer	Frequency	Percentage
1.	Given	30	100 %
2.	Not Given	-	0 %
Total		30	100 %

Source: Primary Data Tabulation, 2018

Table 18 indicates that all respondents have been given the right to receive or send a letter to his/her family or his/her lawyer during the detention

Table 19.
 The Right to Pray or Atau Receive Priest Visiting

No.	Answer	Frequency	Percentage
1.	Given	30	100 %
2.	Not Given	-	0 %
Total		30	100 %

Source: Primary Data Tabulation, 2018

Table 19 indicates that all respondents have been given the right pray or receive the priest visiting.

Table 20.
 The Right of the Suspect to File a Favorable Witness

No.	Answer	Frequency	Percentage
1.	Asked and given a chance	-	0 %
2.	No asked and no given a chance	30	100 %
Total		30	100 %

Source: Primary Data Tabulation, 2018

Table 20 illustrates that all respondents do not give the right of the suspect to file a favorable witness.

Table 21.
 The right of the suspect not to be burdened with proof

No.	Answer	Frequency	Percentage
1.	Be burdened	-	0 %
2.	Not to be burdened	30	100 %
Total		30	100 %

Source: Primary Data Tabulation, 2018

Table 21 shows that all respondents do not to be burdened the proof.

b. Perceptions of the Respondents on Fulfillment of the Rights of the Suspect

According to the respondents, criminal proceedings can occur due to a number of things, namely being caught in the hands; reporting and complaining from victims or members of the public who know or become victims of a crime. If an investigator (police) receives a report or complaint or an information about the occurrence of a crime, then he is obliged to immediately follow up the report / complaint / information. At the scene of the crime, the investigator must immediately collect data and facts related to the crime. The investigators in carrying out their duties must show their identification.

Based on data and facts, the investigators must be able to determine whether there is a crime and the criminal act can be investigated. The results obtained by carrying out the investigation become the materials needed by the assistant the investigator in carrying out the investigation. If enough materials are needed, then the suspect can be arrested. Arrest orders by officers cannot be carried out arbitrarily in order to avoid human rights violations. Therefore, to avoid these mistakes, the arrest order must be carried out with caution and addressed to the person who commits a crime.

In carrying out the arrest, the police are obliged to submit an arrest warrant to the suspect, which contains the identity of the suspect (full name, age, occupation, religion), reason for the arrest made on the suspect, and the place where the suspect is investigated. Then the police are obliged to submit a copy of the arrest warrant to the family of the suspect. According to the respondents, the police in carrying out the duties of probing, arrest, and investigation, in which they always adhere to the Criminal Procedure Code corridor. The police cannot carry out the duties of probing, arrest, and investigation outside the provisions of the Criminal Procedure Code.

The police have the right to hold detention for 20 days, and if the period is not enough, the police can submit an application for an extension to the Public Prosecutor by attaching a brief minute of the case. An extension can be granted if, according to the Public Prosecutor, it is feasible to be extended by issuing a 40-day detention permit extension. If the extension of detention from the prosecutor's office for 40 days has ended, it turns out that the case file has not been completed, the police (investigator) can submit an application to the District Court. This is specifically for cases that are subject to imprisonment of 9 years or more or because the suspect has physical

impairment or a heavy mentality. This must be proven by a doctor's statement, in cases like this an extension of detention can be given for 30 days and can be extended for another 30 days.

The police's response to the fulfillment of the rights of suspects is:

- a. Since the suspect is arrested, the police immediately investigated the suspect and immediately submitted the file to the public prosecutor. The police have never postponed matters that have fulfilled the requirements to be processed, for example, there is enough evidence, witnesses, and the suspect is clear.
- b. When the inspection begins, the police are tasked with explaining the intent and purpose of the suspect being investigated and delivered in a language that the suspect can understand.
- c. When the suspect is investigated, the police have given the suspect the freedom to deny or not acknowledge what he has done. If the suspect continues to deny the accusation, then the duty of the police is to find and show the evidence he has obtained. The police also look for witnesses who can prove the accusation.
- d. The police before investigating the suspect, he/she first informs whether or not the suspect is accompanied by a lawyer. If the suspect says it is not necessary, then the investigation is continued. If the suspect says that he/she needed to be accompanied by the lawyer, then the police give the suspect the opportunity to seek the lawyer he/she wanted.
- e. A suspect who does not have his/her own lawyer, while he/she has been suspected / charged with a criminal offense that is punishable by death or threatened with a sentence of fifteen years or more. For an incapable suspect who is threatened with a sentence of five years or more, then the police will find lawyer to accompany the suspect.
- f. The right to seek treatment for suspects who suffer from illness, either because of illness or because of being shot by the police, is given by the police. The police escorted the suspect to a hospital closest to escort by the police. If the suspect's condition has improved, then the investigation can next.
- g. The suspect who is detained for more than 1x24 hours, he/she will be notified to the suspect's family, stating the reason for the detention of the suspect in the police station.
- h. The right of the suspect to get a guarantee for the suspension of detention, he/she will be given selectively. If the detention is deemed impossible to be given due to various considerations, then the guarantee for the suspension of detention of the suspect cannot be given.
- i. The suspect can directly or through his lawyer can contact and accept family visits in relation to work interests, as long as the visit does not interfere with the proceedings.
- j. The suspect is given the right to send a letter to the lawyer and receive a letter from the lawyer or his relatives. The police have never banned the relationship of the correspondence.
- k. The suspect can contact and receive visits from the clergy, if indeed the suspect wants it.
- l. The police have never banned suspects who will bring witnesses who can benefit him.

c. The barriers Faced in Fulfilling the Rights of Suspects

The barriers faced in fulfilling the rights of suspects in Jayapura can be detailed as followings:

- 1) There are suspects who are legally blind (do not know their rights).
- 2) investigation of suspects who are not accompanied by lawyer.
- 3) The suspect who give a convoluted statement.
- 4) Unclear families of suspects' residents
- 5) Influence of military education systems that are military in nature.
- 6) The police are still affected by the HIR investigation system that considers the suspect as an object of investigation.
- 7) The police tend to seek recognition from suspects rather than looking for other evidence to strengthen the accusation.
- 8) Inadequate levels of police education to become investigators.
- 9) Lack of police understanding of the prevailing laws and regulations, especially regarding the criminal procedure law and human rights.
- 10) Lack of supervision from police superiors to subordinates.
- 11) Lack of police understanding of the case he/she handled.
- 12) The police often seek illegal evidence and the illegal evidence can still be used as evidence against the accused at the trial.
- 13) The number of police personnel who are not comparable to the number of criminal acts that occur.
- 14) Facilities and infrastructure owned by the police are still very limited.
- 15) The lack of fulfillment of the welfare of police officers.

- 16) The existence of a police culture tends to violate the principle of presumption of innocence.
- 17) There is a weakness of the Criminal Procedure Code that does not regulate clear sanctions or legal consequences if there is a violation of the rights of the suspect or defendant.
- 18) The custom of the police searching for the fault of the person who is arrested by manipulating his/her mistake.
- 19) Weaknesses of the Criminal Procedure Code in regulating detention deadlines.
- 20) Limited funds provided to find lawyer for suspects who cannot afford it.

d. Proposed Countermeasures for Overcoming the problems

There are some efforts to overcome such problems that arise in fulfilling the rights of suspects in the of Jayapura, as followings:

- 1) To increase police knowledge on legal science, methods, or techniques of investigation.
- 2) The police must be given an understanding of discretion in order to determine when they can arrest or not arrest the suspect, when they can continue or not proceed to court.
- 3) The need to make changes to the Criminal Procedure Code to limit the behavior of law enforcers in misusing their authority.
- 4) There must be a good reason why an extension of detention is needed and whether it is still necessary to extend the detention.
- 5) To pay attention to the legal basis and basis of the interests of detention as referred to in Article 21 paragraph (1) and (4) of the criminal procedure law.
- 6) To determine the exact period of time needed to complete the case investigation.
- 7) It must be considered properly if the extension of detention is refused, whether or not it hampers the settlement of the case.
- 8) To pay attention to the security factor of the community if the suspect is outside detention.
- 9) To increase supervision from superiors to subordinates by giving strict sanctions to police in the form of punishments or administrative sanctions, if there is one of his/her subordinates committing an offense / error.
- 10) To Provide education and training to law enforcement officers (police) in accordance with the tasks to be carried out.
- 11) To improve the professionalism of each individual in handling cases.
- 12) To enforce the law in accordance with the laws and regulations.
- 13) To streamline its administration and bureaucracy.
- 14) To improve the mental work of the police in handling every case.
- 15) To give a response or resolve the case properly.
- 16) To improve the welfare of police members.
- 17) To improve facilities and infrastructure.
- 18) To improve cooperation with the community.
- 19) The police should only be able to use violence if forced, namely to defend themselves. If there is a suspect who escapes, then a wiser action is to pursue him/her, and not shoot or shoot dead. Shooting is not the right action because the police are not in threatened condition.
- 20) There should be good coordination between the police leadership and their subordinates to avoid procedural error.

e. The Relationship of Police Institutions with Other Institutions

The success of the implementation of the Criminal Justice System in achieving the system's objectives is to tackle the crime depending on the integration of its law enforcement officers. Integration or relationship between law enforcement officers means there is a good coordination between police institutions and prosecutors, courts, correctional institutions, and lawyer. Those integration can be summarized as follows:

1. Every investigation carried out on the orders of the investigator, the police / investigator must notify the public prosecutor / prosecutor.
2. The public prosecutor can give instructions to investigators to complete the investigation.
3. the investigators if they want to stop the investigation must inform the public prosecutor because there is a possibility of validity or not the investigation.
4. Holding regular meetings between law enforcement agencies.
5. With pre-trial investigation, Article 77 of the Criminal Procedure Code practically indicates the police and prosecutors to make contact.
6. The presence of lawyer on the preliminary investigation according to the investigator is no problem and must be accepted but in certain cases lawyers cannot complicate the investigation

because this is intended to protect the suspect against pressure from the investigator. During the preliminary examination. The lawyer is not allowed to directly answer the question of the investigator.

7. The relationship of the police institution and the court institution can be explained that the judge has the authority to extend the time of detention, in addition, the judge is also able to search, confiscate, and the authority to provide warrants to open letters.

3.2 Discussion

In more detail, the implementation of the rights of suspects can be explained as follows:

1. The police in arresting the suspect violates Article 18 paragraph (1) of the Criminal Procedure Code, which the arrest is made by showing a letter of assignment and giving an arrest warrant to the suspect. Of the 30 respondents who give answers that the police carried out arrests carried letters of duty and gave arrest warrants to only 6 people (20%), 21 people (70%) did not show a letter of assignment and do not provide an arrest warrant even though the suspect was not caught in the hands. Police actions to arrest a suspect by not showing a letter of assignment and not accompanied by an arrest warrant can be said to be a violation of human rights and classified as an act of kidnapping. The suspect who answered another 3 people (10%) because basically the suspect is afraid to ask the police when he is arrested, do not give the opportunity to ask questions, and do not know that the police has to show a letter of assignment and arrest warrant.

The answer of the suspect (Table 1), it is to basically contrary to the answers given by the police (70%). According to the police, the commencement of the investigation or even the arrest to give a letter of assignment and / or arrest warrant to the suspect is in accordance with Article 18 paragraph (1) and Article 104 of the Criminal Procedure Code. Thus, it can be said that the arrest process in Jayapura is not entirely carried out in accordance with Article 18 paragraph (1) and Article 104 of the Criminal Procedure Code, because the police in arresting the suspect do not bring or show a warrant of arrest or arrest order to the suspect.

The arrest of the suspect can only be done by not accompanied by a task warrant or arrest warrant in the event if the suspect is caught in hand.¹ Beyond these conditions, the arrest made is illegal. If this happens, the suspect can file a legal action to sue him/her through a pre-trial judge as stipulated in Article 77 the criminal procedure law, Article 8 of Universal Declaration of Human Rights (UDHR), and Article 9 paragraph (4) and (5) ICCPR.2.

2. Table 2 explains the attitude and behavior of the police at the time of arrest to behave badly (100%). It is because the police always behave harshly and force suspects to follow their wishes, beat, harass, inhumane, deceive / deceive suspects, humiliation in front of their family, and/or humiliation before the public. The suspect's answer contradicts the answer given by the police stating that the police in carrying out their arrest duties are always wise and act in accordance with the laws and regulations. The police in carrying out their duties will always serve, protect, and respect the human rights of all people.

The differences in the answers as mentioned above indicate that the attitude of police behavior still needs to be improved in order to provide more protection the suspect's status during the examination. Thus, the attitude of police behavior in arresting suspects in Jayapura is not in accordance with Article 5, and Article 9 UDHR, and in conflict with Article 7, Article 9 paragraph (1), and Article 14 paragraph (3) ICCPR, as well as violating Article 34 of the Law No. 39 of 1999 concerning Human Rights.

Action taken by the police during arrests of suspects can be categorized in the CCM as stated by Herbert L. Packer. As an indication of it, the police use their power more and the suspect in the same time is in a very weak position. In terms of it, the police have first believed that the suspect has been guilty. In addition, action taken by the police can be categorized in CCM, Passage Model Status, and Power Model stipulated by Michael King. As an indication of it, the suspect is experiencing unpleasant treatment, the suspect feels humiliated in public, and the suspect becomes a victim of oppression from the police in carrying out their duties and interests.

3. The fulfillment of the right of the suspect to immediately get an investigation at every stage of the judiciary as stipulated in Article 50 of the Criminal Procedure Code. It has not been fulfilled optimally (see table 3). From the length of detention carried out by investigators against suspects, it indicates that the investigators tend to use the maximum limit guidelines for a suspect to be detained. This is clearly contrary to Article 50 of the Criminal Procedure Code, which states that the suspect has the right to immediately get an examination from the

¹ Yayasan Lembaga Bantuan Hukum Indonesia (YLBHI), op. cit., p. 68.

investigator and then submit it to the Public Prosecutor. Article 50 of the Criminal Procedure Code relating to the general explanation of item 3 letter (e) of the Criminal Procedure Code that the judiciary must be carried out quickly, simply and at a low cost and free, honest and impartial must be applied consequently at all levels of the court.

Based on Article 50 of the Criminal Procedure Code, the suspect should get the right to be immediately investigated and brought to trial. It means that law enforcement officers do not hold suspects for longer, but the opposite is true. The position of the suspect in this case is very weak because the suspect cannot force law enforcement officers to immediately investigate and file it before the court. The reason of the investigator detaining the suspect is longer, it is partly because of the inadequate number of police officers; the level of knowledge of the officers regarding the legislation in effect; the process has not been completed; based on the maximum limit of detention, the witnesses who are called do not immediately come or fulfill the call; the placed crime is far away with the police station; and the official car (transportation) is limited.

In addition to the reasons stated above, if Article 50 of the Criminal Procedure Code is related to Article 24 - Article 28 of the Criminal Procedure Code, it is clear that a suspect can be detained within 400 days. Not to mention if it is related to Article 29 of the Criminal Procedure Code which states that based on reasons that are reasonable and unavoidable, the suspect or the accused can be extended for detention due to physical disruption, threatened with a sentence of nine years or more for a maximum of 30 days and can be extended for another 30 days. If it is calculated, the duration will increase by 300 days. This is clearly contrary to Article 50 of the Criminal Procedure Code and the principles of justice are fast, simple and inexpensive. If Article 50 of the Criminal Procedure Code pay attention, it is clear that the intention of the law makers is to protect the rights of the suspect.

In fact, the suspect's rights are often ignored even though the law enforcer (Police, Prosecutors, and Judges) can immediately conduct an investigation. The excuses stated by the investigator (police) that their actions are in accordance with the corridors of the Criminal Procedure Code, without realizing that the actions taken are actually not appropriate for the implementation of the protection of the rights of suspects. Police actions to detain suspects for a period of unfair-time is an action that cannot be justified because it contradicts to Article 9 paragraph (3) of the ICCPR. This is because in Article 9 paragraph (3) of the ICCPR states that every person who is arrested or detained based on criminal charges, must immediately be confronted before a court or other official authorized by law to exercise judicial power, and has the right to be tried within a period of time natural, or released. Article 9 paragraph (3) of the ICCPR provides clear limits that a suspect cannot be detained for a long time.

4. The implementation of Article 51 of the Criminal Procedure Code is to prepare the defense of a suspect has the right to be clearly notified in the language he/she understands about what It is alleged at the time of the investigation and it had been carried out well, because all respondents who had been interviewed were all told about what was alleged to him/her and in understandable language (Table 4). The fulfillment of the rights of suspects according to Article 51 of the Criminal Procedure Code is in accordance with Article 14 paragraph (3) letters (a) and (b) of the ICCPR, which states that everyone has the right to be notified as soon as possible and in detail in a language that can be understood, about the nature and reasons for the accusation imposed on him/her, and to be given adequate time and facilities to prepare his/her defense and deal with his/her chosen lawyer.

5. The right of the suspect to provide free information (Article 52 of the Criminal Procedure Code) has not been implemented properly, because investigators often force the suspect to answer every question asked. If every question asked is not answered according to what the police want, then the police will not immediately use violence as an attempt to confess the suspect. The suspect is in a very weak position, so that the suspect cannot evade or defend him/her-self even though he/she is actually not correct. There is no other way for suspects not to follow or obey the will of the police, because they are continuously treated harshly / cruelly by the police.

The reason for investigators using violence against suspects is to seek the truth, find evidence, uncover other crimes committed by suspects, seek other information needed, and seek recognition from the suspect. It takes place because basically the suspect tries or deny the actions he/she has done. On the one hand, each suspect who is questioned always tries to deny the alleged crime, even though the evidence clearly shows that the suspect is guilty.

The implementation of Article 52 of the Criminal Procedure Code relates to Article 14 of the ICCPR paragraph (3) letter (g) which states that the suspect has the right to guarantee not to be forced to testify against him/her or

forced to plead guilty. This is in line with the explanation of Article 52 of the Criminal Procedure Code which states that the investigation can achieve results and do not deviate from the real, the suspect must be kept away from fear. Out of 30 respondents stated that the police did not give the suspect the freedom to give his/her information. Actions taken by the police in this investigation cannot be prosecuted, because usually those who carry out the deviant actions are not investigating officers but other police officers (not investigators) so that their actions cannot be proven by the suspect at the trial. This is the ingenuity of the police to take irregularities at the inspection stage, because as if the police already know how to anticipate what would happen if the suspect demanded it.

Thus, it can be said that the system of investigation conducted by the police in revealing a criminal act still follows the HIR method (inquisitor system). This clearly violates human rights. Investigation with this inquisitor system considers that the suspect is an item or object that must be investigated, so that the presumption has been more or less believed by the police that the suspect is guilty. Such actions can actually be anticipated if the suspect uses his/her right to be accompanied by a lawyer at the time of investigation at the investigation level. The existence of a lawyer in assisting a suspect at this stage of the investigation will more or less influence the police in conducting an investigation of the suspect. Actions that would have been carried out by the police, but because of the existence of a lawyer who always supervised the course of the investigation, the police would clearly try to obey the rules set by law. In other word, the police would try to be on the right track. it is said therefore that the implementation of Article 52 of the Criminal Procedure Code cannot yet be implemented properly, and besides that a contrary to Article 5 UDHR, Article 7, Article 10 paragraph (1), and Article 14 paragraph (3) letter g ICCPR, Article 1 CAT, and Article 33 Human Rights Law.

6. The implementation of Article 53 of the Criminal Procedure Code as in Table 6 has basically been applied well, especially to suspects who are foreign citizens. This is in accordance with Article 14 of the ICCPR paragraph (3) letter (a) which states that the suspect has the right to be notified as soon as possible in an understandable language. Article 14 of the ICCPR paragraph (3) letter (f), the suspect has the right to get free assistance from an interpreter if he/she does not understand or cannot speak in the language used in the court. Therefore, a suspect cannot be investigated if he/she does not understand or does not understand Indonesian well. This applies not only to foreign nationals, but also applies to all suspects who cannot understand Indonesian well.

7. Table 7 shows that police attitudes and behavior while checking suspects are not good. It can be seen that all suspects give the same answer. Police in investigating suspects often use violence such as shaking, hitting by hand or with tools such as hoses or pistol handles, torturing such as the neck of a suspect hung up to 5 seats, the suspect is shocked and the suspect is often harassed. Thus, it can be said that the acts of violence committed by the police are contrary to Article 5 of the UDHR, Article 7 of the ICCPR, Article 1 CAT, and Articles 4, 33 and 34 of Laws on Human Rights.

8. Article 53 of the Criminal Procedure Code indicates the right to get an interpreter. Article 53 is in line with Article 51 of the Criminal Procedure Code. If there is a suspect who does not understand Indonesian, then he is given an interpreter assistance in accordance with his/her wishes. Suspects who are foreign nationals usually want an interpreter from the consulate in Bali. If there is no search from the Embassy office in Jakarta. If the suspect does not want to get the assistance of an interpreter from the consulate and the embassy, then the police officer will find the interpreter. Such conditions are in accordance with Article 14 paragraph (3) letter (f) of ICCPR.

9. Based on Table 8, it shows that the police in investigating suspects are still characterized by discrimination, which is answered by 21 people (70%). Suspects who have good connections or acquaintances with members of the police and also foreign nationals, they are treated politely, well and never beaten. This is different from suspects who do not have acquaintances with the police or are incapable, he is treated harshly by the police. According to the police, all suspects, both foreign nationals and Indonesian citizens, are treated equally well without any difference. The suspect who answered that there was no discrimination in the investigation is only 9 people (30%) out of 30 respondents. Thus, it can be said that the police in investigating suspects are still influenced by acts of discrimination. This is clearly contrary to Article 7 UDHR, Article 1 CAT, and Article 3 paragraph (3) of the Human Rights Law.

10. According to Table 9, suspects who know the rights regulated in the Criminal Procedure Code are only 1 person (3.33%), while the suspect who does not know his rights is 29 people (96.67%). This fact provides an opportunity or opportunity for the police to act arbitrarily or manipulate the suspect by means of frightening or

deceiving the suspect or other means that can cause the rights of the suspect to be violated. In addition, the investigator (police) tends not to convey the rights of the suspect. For suspects who do not understand their rights or who are legally blind will not realize that their rights have been violated. The police action clearly violates Article 51 of the Criminal Procedure Code, Article 9 paragraph (2), and Article 14 paragraph (3) of ICCPR.

11. According to Table 10, all suspects and the accused have been given the right to get legal aid. Therefore, the implementation of Article 54 of the Criminal Procedure Code relates to Articles 55 and 56 of the Criminal Procedure Code, which regulates the provision of legal aid to suspects. This right is also regulated in Article 14 of the ICCPR paragraph (3) letter (d), the suspect has the right to defend him/her self directly or through his/her chosen defender.

12. Before being investigated by a suspect, they have been asked beforehand about whether or not to get legal assistance or be accompanied by a lawyer. Table 11 shows that all 30 respondents (100%) states that they has been asked beforehand by the police about getting legal assistance or being accompanied by a lawyer before the investigation began. Thus, the suspect's right to get legal assistance and accompanied by a lawyer before the case began. This is in line with Article 114 of the Criminal Procedure Code, and Article 14 paragraph (3) letter (b) and (d) ICCPR.

13. In Table 12, during police interrogation, all the respondents (30 people) states that during the investigation the suspect is accompanied by a lawyer during the the investigation. Although all this time, there are suspects who refuse or are unwilling to exercise their rights to be accompanied by a lawyer as in Article 56 of the Criminal Procedure Code. If there is a suspect who is not willing to be accompanied by a lawyer then the investigation will continue even without a lawyer.

This condition is in line with practices in the United States called the "Miranda Rule", in which the officer who catches someone is obliged to remind and inform someone who will be arrested that: a) He has the right to be silent; b) Any statement or statement can be used as evidence against him/her; c) He has the right to be accompanied by a defense; and d) If he is unable, he will be appointed a defender before he/she is interrogated.

In connection with the Miranda case, it can be said that if the law enforcers do not deliver warnings and can be proven, then all evidence obtained during the investigation of the suspect cannot be submitted and used in the trial.

14. The reason for the suspect not using a lawyer during the investigation can be seen in Table 13. From 30 respondents, 21 people (70%) answer that they are unable, 2 people (6.67%) answer that they do not trust lawyers, and others answer 7 people (23, 33%) by saying that the answer does not know, the police are influenced by saying that using their lawyer services will be processed for a long time and if they do not use their case the lawyer is quickly completed, the procedure is confusing (convoluted), and afraid of the police.

Therefore, it is important that the suspect must obtain sufficient legal assistance according to the rule of law in order to obtain legal justice which are actually. The obstacle is that most of the suspects do not know or understand the Criminal Procedure Code, do not know the procedure for obtaining legal assistance, and the most important is not having sufficient funds. The implementation of Article 57 relates to Article 54, 55 and Article 56 of the Criminal Procedure Code, and specifically for foreign nationals related to Article 53 of the Criminal Procedure Code. Thus, it can be said that the implementation of Article 57 of the Criminal Procedure Code has been implemented, except for suspects who do not use their rights. This is in line with the sound of Article 9 paragraph (2) and Article 14 paragraph (3) letters (a), (b), (d), and (f) ICCPR.

15. Table 14 shows that the implementation of Article 59 of the Criminal Procedure Code has been carried out well. This can be seen from 30 suspects all of whom stated that they had been notified by the competent authorities about the detention of the respondent, even though to deliver a notification letter this is delayed, which is due to the suspect's family address that is far from the city. Thus, it can be said that the implementation of Article 59 of the Criminal Procedure Code has been carried out properly, because the police have basically informed the suspect's family of his/her detention. The delay in notification by the police is solely because the suspect's family address is far from the city, and if not notified to the suspect's family, it is because the suspect does not provide a clear address of his/her family's residence. This is contrary to the statement of the suspect who stated that he had provided a complete and clear address to the police.

16. Based on Table 15, it shows that the suspect's right to contact and receive visits from other parties in order to obtain a guarantee for the suspension of detention or legal assistance as stipulated in Article 60 of the Criminal Procedure Code has been given. It can be seen that all respondents (30 people) states that they have been given their rights. Although the police have notified and granted the rights, all respondents do not use the right to obtain guarantees for the suspension of detention. It is because all respondents indicate that they do not know the procedure and do not have a security deposit. For the sake of it, it can be said that the implementation of Article 60 as described in Table 16 has been carried out, but the suspect him/her self does not use the right to obtain guarantees for the suspension of his detention.

17. The implementation of Article 61 of the Criminal Procedure Code as described in Table 16 has been given, but this visit is only given well after the suspect is handed over to Abepura prison as a police detainee. Previously the police only give permission for the visit as long as the inspection is declared complete. Besides that, the place and time of visit provided at the Police Station is very limited, so that the suspect cannot be more free in discussing family matters, or his/her job. After the suspect has been transferred from police custody to Abepura prison, the family can visit the suspect in accordance with the rules in force in the Correctional Institution (LP). Thus, it can be said that the implementation of Article 61 of the Criminal Procedure Code cannot be implemented optimally.

18. The suspect's right to contact the doctor while in custody (Table 17), it appears that all respondents answer that they are not given their rights. These results indicate that as long as the suspect in detention is not given the opportunity to contact the doctor or seek treatment, even though the suspect's condition really need a treatment from the doctor.

Abepura prison has provided Center of Public Health (Puskesmas) to facilitate the suspects who need treatment. However, the suspects who seek treatment can only be given treatment in accordance with the drug and the ability of doctors at the Puskesmas. If the suspect asks to contact a private doctor, the LP Health Center Doctor will supervise the examination in order to keep the possibility of collusion. Therefore, the implementation of this right has not run optimally, because the suspect is not given the right to seek treatment for the illness.

19. The implementation of Article 62 of the Criminal Procedure Code has been implemented properly. Table 18 shows that 7 out of 30 people only use their rights to send letters or receive letters from family or friends. If there is a detainee who receives / sends a letter, then the correspondence relationship is always closely monitored by the LP officer and even does not hesitate to open the letter on the grounds that the letter needs to be suspected of its contents. Such conditions as if the suspect's human rights do not receive proper protection. Article 62 of the Criminal Procedure Code relating to Article 12 of the UDHR, and Article 17 paragraph (1) of the ICCPR. Based on Article 12 UDHR jo. Article 17 paragraph (1) of the ICCPR, the implementation of Article 62 of the Criminal Procedure Code has not been able to protect the personal rights of suspects, even though the implementation has been carried out, namely by allowing the suspect to send and receive correspondence.

20. Table 19 shows that the implementation of Article 63 of the Criminal Procedure Code has been carried out, because all respondents give the same answer that they have been permitted to carry out worship and receive or contact the clergy. So far, the suspects have not used their rights to receive or contact clergy. The suspect only uses the right to practice worship in the place provided. After the suspect has been transferred from the Police Station detention to Abepura prison, the suspect can carry out worship according to their respective place of worship which is already available in Abepura prison. Thus, it can be said that the implementation of Article 63 of the Criminal Procedure Code has not been implemented optimally.

21. The right of a suspect to submit a favorable witness (Article 65 of the Criminal Procedure Code) has not been carried out properly. Table 20 shows that all respondents are not given an opportunity and are not asked in advance by the police to propose and seek a witness who was favorable to him. This is contrary to Article 116 paragraph (3) of the Criminal Procedure Code which states that in the investigation the suspect is asked whether he/she wants to hear the witness who can benefit him/her and if there is, then it is recorded in the minutes. Furthermore Article 116 paragraph (4) of the Criminal Procedure Code provides additional explanation that if there is a witness desired by the suspect, then the investigator will call and examine the witness. But in reality, the suspect is not given the right. It can be said that the implementation of Article 65 of the Criminal Procedure Code has not gone well, and therefore violates Article 14 paragraph (3) letter (e) ICCPR.

22. The implementation of Article 66 of the Criminal Procedure Code is the suspect is not burdened with the obligation to prove and has been carried out at the level of investigation at the level of probing. Table 21 shows

that all respondents (30 people) answer that they are not burdened with the obligation to prove their mistakes. Thus, the implementation of Article 66 of the Criminal Procedure Code has been carried out in accordance with Article 11 paragraph (1) of the UDHR, and Article 14 paragraph (2) of the ICCPR, which states that anyone accused of a criminal offense has the right to be considered innocent until proven guilty according to law. Although in Table 22 shows that all respondents have been given their rights, in practice the police tend to discredit / suppress the suspect to give recognition for the accusations against him/her.

23. The implementation of Article 68 of the Criminal Procedure Code is the suspect has the right to claim compensation and rehabilitation as stipulated in Article 95 of the Criminal Procedure Code. So far, no suspect has demanded compensation or rehabilitation, considering the status of the respondent is still a suspect, and the investigation of him/her is still not completed. Article 68 of the Criminal Procedure Code is related to Article 9 of the ICCPR paragraph (5) which states that every person who is a victim of arrest or unauthorized detention has the right to get compensation that must be carried out. In addition, it also relates to Article 14 paragraph (6) of the ICCPR which states that if a person has been sentenced by a legal decision that has permanent legal force, and if later it is decided otherwise or forgiven based on a new fact, or the fact that has just been found showing conclusively that there has been an error in upholding justice, the person who has suffered punishment as a result of the decision must be compensated according to the law, unless it is proven that the unknown fact is not revealed, fully or partly due to him/her self.

Regarding the findings and discussion as mentioned above, it can be said that implementation in fulfilling the rights of suspects in Jayapura has not been able to run optimally because there are still many rights of suspects that cannot be fulfilled in accordance with the Criminal Procedure Code and international instruments (such as UDHR, ICCPR, and CAT). Actually, if it is observed carefully that the existence of the Criminal Procedure Code is intended not only to protect the rights of suspects but more importantly so that law enforcement officers who are members of the Criminal Justice System carry out their duties in accordance with the provisions of the Criminal Procedure Code.

4. Influenced Factor of Suspect Legal Protection

As stipulated in Article 2 the Law Number 2 of 2002 concerning the Indonesian National Police, it states that the National Police as a tool of law enforcement and protection of society in maintaining public security and order are basically obliged to realize security and public order in the framework of maintaining domestic security.

Many police investigators experience obstacles in carrying out their duties. Although sometimes these obstacles cannot be overcome alone, the National Police always declares that they are capable of carrying out their duties properly. This declaration is very important to be conducted by the National Police in order to keep the public's trust in the ability of the National Police as law enforcement to protect the society. The approach to violence in the investigation process is still a serious problem. This is not solely due to the opportunity that comes from the weakness of the legal instruments, but it is precisely determined by many factors and one of which is a political factor.

To see the factors that influence the enforcement of the law, they will be discussed in the law enforcement factors as stated by Sorjono Soekanto. They are:

1) Substance law.

The existence of the Criminal Procedure Code as a procedural law instrument determines the fairness of an event handling a criminal case. It still needs to be reviewed. It can be seen that as a criminal procedural law in Indonesia, it turns out that the Criminal Procedure Code still shows various procedural weaknesses. This weakness does not only deter suspects from fulfilling a sense of justice, but it has provided considerable also opportunities for abuse of authority that can violate human rights. The Criminal Procedure Code does not regulate how sanctions are if the investigator does not inform the suspect's rights. Likewise, the freedom of lawyer in talking to suspects can be threatened as prohibited if there is evidence that the lawyer of the suspect has abused his rights. The Criminal Procedure Code does not regulate how to prove the existence of abuse of legal counsel rights is unclear and even tend to be subjective in nature and then what actions are taken by lawyer or the suspect him/herself for the prohibition of speech imposed on them.

Evaluation of the Criminal Procedure Code shows that there is no proper way to prevent or overcome the use of violence in the investigation process. Some basic principles such as the prohibition on the use of physical and psychological violence, administrative procedures for acts of arrest, detention and confiscation, correction procedures through pre-trial have not shown clear limitations. Thus, it can be said that there is a good legal

substance, it will minimize the opportunity / opportunity of law enforcement officials to abuse their authority. Although it was realized that the renewal of the substance of the law was not the only answer to the problem of violence in handling criminal cases.

2) Law Enforcer

Law enforcement officers who are members of a Criminal Justice System are police, prosecutors, judges and correctional institutions (LP). In order to embody these legal ideals (justice, benefit, and legal certainty), they must work in an integrated and consistent manner in carrying out the law. According to Luhut MP Pangaribuan, as part of the criminal justice system, rights, the obligations, duties and authorities of the National Police should not overlap with other elements of law enforcement enforcers such as prosecutors, lawyers and the judiciary. According to respondents, the National Police in carrying out law enforcement duties often use forced efforts to obtain information from suspects. The culture of violence carried out by the police seems difficult to eliminate because the leader cannot directly control what actions have been taken by his/her subordinates. The National Police Chief only gives orders, while his/her subordinates must be ready to carry out orders. As a subordinate, he/she cannot refuse the leadership's orders, so that any way and effort will be carried out to fulfill the orders of the superiors, as happened in Jayapura Regency in the case of buying and selling land.

The prosecutor cannot control the police's actions in seeking evidence submitted to him/her. The prosecutor can only determine whether the file sent by the police is complete or not, accepted or not. If there is an error of arrest or detention, then the police as the party being blamed or responsible, and the prosecutor throws the mistake at the police. As a framework incorporated in the Criminal Justice System, the prosecutor's actions cannot be justified because the success or failure of the operation of a system depends on the whole institution.

Judges at the trial often do not give the accused the opportunity to defend him/her self or reveal the true reality. The judge is only guided by the indictment made by the prosecutor. The judge's partisanship with the prosecutor takes place in the case of Marsinah, the accused are unable to defend themselves or reveal the real situation in the trial. The judge only guided that the accused has agreed (signed) regarding the indictment, the rest of the judge ignores the confession or statement of the accused in the trial. The judge even tends to support the indictment by asking questions that are difficult to answer by the defendant.

In practice, lawyers can only look for weaknesses in the indictment but cannot find the real truth. The lawyer can only ask the judge to consider his/her opinion or defense, but the decision is in the hands of the judge. As in the case of Marsinah, the lawyer was powerless in defending the accused against the engineering of the indictment.

3) Facilities and Infrastructure

Without the existence of certain facilities, it is impossible for law enforcers to work properly. Facilities include educated and skilled human resources, good organization, adequate equipment, sufficient finance and others. If this is not fulfilled, it is impossible for law enforcers to be carried out to achieve its objectives. According to the respondent, the National Police has a very limited number of personnel who are not comparable to the population. It has still limited facilities and infrastructure such as transportation, communication, accommodation, administration, rooms and buildings, laboratories and welfare. This condition causes the law enforcers task to not work as expected.

Existing conditions and the weaknesses can be detailed as follows:

- a) To go to the main location of the crime, there is a need for better transportation and communication. So far, the police have visited the scene of the crime, but they are still very slow. The consequence of it then, it is resulting a bad impression on the image of the police. The police always argue that the official car is missing, damaged, or where it is far from the location.
- b) The investigation and detention room are very limited and their condition are not good enough to be used. Especially for the detention room, the police do not provide lighting facilities. The suspect is placed in a room that is also narrow in the dark and is not provided with a bed.
- c) The suspect is not provided with medicine when he/she is ill and the doctor is not asked to check his health but he is left alone adequate.
- d) There is no an adequate visitingrooms

4) Community itself

One of the goals to be achieved in law enforcement is to create security and order in a society. Therefore, the community can be an influencing factor influencing to the law enforcement officers. In perspective of the

community, the level of community understanding and compliance with the law is the influencing factor coming from the community.

5) Culture

The police officers are always suspicious to someone when they conduct their tasks. Based on his experience in arresting, putting someone in jail, or exposing crime, the police feel most able to identify criminals and crimes. If the police have arrested or detained a person, the police are prejudiced or strongly believe that the person (suspect) who is arrested or detained is truly guilty based on the facts previously collected. The presumption of innocence as one of the principles adopted in the criminal procedure code is ignored by the police officers. The police still feel confident that someone who has been suspected of committing the crime is really the criminals (suspect) and should be treated as a guilty person. The police always give reasons that it is impossible to arrest or detain someone if the person is innocent.

The culture of torture by the police is still often done, although it is often not acknowledged. The compact and togetherness of each police officer in nature has become a habit that cannot be eliminated. Each member of the officer tends to protect one to another. So that violations or mistakes made by his colleagues will be supported and even protected. Bribery culture is a problem that is difficult to be eliminated. The bribery culture is often used as an excuse because of a small salary, lack of welfare, and because of needs. This weakness makes the implementation of law enforcement does not provide a sense of justice and legal certainty of the community.

5. Some Efforts to Improve protection against the suspects and the Accused

Some efforts that need to be done in improving protection of suspects are to:

- a. Conduct intensive investigations to avoid mistakes against suspects, evidence and witnesses.
- b. Attempt fully complying with the arrest procedures that have been regulated by the Criminal Procedure Code to give a duty warrant and arrest warrant to every police officer who will carry out arrest tasks.
- c. Make every effort to immediately contact the families of suspects who are arrested or detained.
- d. Attempt to provide or find a lawyer for suspects who are subject to a sentence of five years or more but less than fifteen years, but he does not have his own lawyer and is also unable.
- e. Make serious and immediate handling of reports and complaints received.
- f. Make improvements in the field of administration and bureaucracy.
- g. Conduct monitoring efforts for every member of the National Police who performs his/her duties and obligations. The supervision efforts carried out including to give strict sanctions to every member of the National Police which proved to have violated the law and discipline of the National Police. Sanctions can be in the form of legal sanctions (punishment), administrative sanctions in the form of demotion to termination of duty. The granting of strict sanctions to every member of the police who violates the rules is expected to provide motivation for members in carrying out their duties. Every action taken can be controlled so that an error does not occur.
- h. Carry out an inventory of all forms of human rights violations that occur, and then provide steps for solving them. This action must be carried out in a real, serious and responsible manner to avoid the public's bad image of the police.
- i. Increase the professionalism of the National Police in form of providing education and special technical skills in the field of law enforcement.
- j. Improve the coordination relationship between superiors and subordinates, especially in terms of implementing law enforcement duties. With strong coordination, it is expected to reduce or even avoid the occurrence of abuse of authority or violations of human rights.
- k. Improve better collaboration with other agencies to help smooth the tasks, especially to the Prosecutor's Office, Courts and Correctional Institutions.
- l. Increase efforts to arouse attention and instill understanding in the community and to create attitudes and adherence to the law, especially against suspects by providing an understanding of the rights of the suspect.

6. Conclusion

Referring the deeply discussion as mentioned above, it can be concluded as follows:

1. Implementation in fulfilling the rights of suspects and the accused according to the criminal procedure code in Jayapura is still not running properly. It is because there is still number of violations conducted by the police officers to the suspect and the accused. The arrest and detention procedure paid little attention to the rights of suspects and the investigation process at the investigation level is still colored

- by actions that violated human rights. Some violation can be seen in terms of arresting without accompanied by letters and various violent practices and physical and psychological threats.
2. Some efforts in improving the protection of suspects and the accused are:
 - a) Improving the ability and knowledge of the police (investigators) in the field of education and skills in order to be more professional in carrying out their duties and authorities.
 - b) Improving preventive and repressive functions in carrying out tasks law enforcement.
 - c) Increasing strict supervision on the implementation of police duties, especially in law enforcement, by giving sanctions to violating members.
 - d) Adding facilities in the implementation of law enforcement duties.
 - e) Improving the police officer welfare.
 - f) Improving better work mechanism.
 - g) Collecting the cases of human rights violations that occur, and then immediately take appropriate actions to resolve the case more transparently to the community.
 - h) Improving the coordination relationship between superiors and subordinates, especially in terms of implementation law enforcement tasks
 - i) Improving better cooperation with other agencies to help smooth the tasks, especially to the prosecutor's office, court, and correctional institutions.
 - j) Increasing efforts to arouse attention and instill understanding in the community, to create attitudes and adherence to the law.

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