

## **Law Enforcement against Serious Human Right Violation: A Restorative Justice Perspective**

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**Abstract:-** The increasing number of cases of human rights violations, should be more firmly also handling and the decisions as a form of human rights law enforcement. The research uses a type of normative-legal research that will be complemented by a socio-legal approach or a legal approach in a perspective of sociological. The results shows that the violation of human right in Papua from murder, genocide and against humanity are seen in the events of Wasior, Wamena, Abepura, Paniai for overtime and also the events of Intan Jaya, and for genocide crime is only in Paniai. However, since there is no regulation on the authority of the prosecution to settle the case outside the court, the provision cannot be applied as a basis for the implementation of restorative justice by the prosecutor. Similarly, the restorative justice approach by customary institutions and local governments collided on the budgetary inventory by the local government in the implementation of compensation for victims or families as result of serious human rights violations in Papua. The government of Provincial, District and Municipal need to apply restorative justice approach in handling cases of serious human rights violation by involving local customary institutions in the law enforcement of human rights in Papua. Retributive justice is the guard and guarantor of other principles of justice.

**Keywords:-** *Human Rights, Restorative Justice, Law Reform*

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### **I. INTRODUCTION**

Since the first of reform era, the condition of human rights enforcement in Indonesia has progressed although not in accordance with the publics' expectations. Through the 1945 Constitution, Indonesia is a country that upholds the human rights of every human being. Indonesia also has various rules and legislation that substantially support human rights enforcement, and institutions that fight for human rights in their respective fields. In addition to the National Commission on Human Rights, Indonesia also has Women National Commission and the Indonesian Child Protection Commission. However, the practice in the field, cases of human rights violations continue to grow without being followed by a balanced and fair legal process.<sup>1</sup>

Progress in efforts to enforce human rights, especially post-reform should be grateful. However, the government still needs to reform the legislation related to human rights law enforcement and implementation by law enforcement authorities.<sup>2</sup> The increasing number of cases of human rights violations, should be more firmly also handling and the decisions as a form of human rights law enforcement.

The system of punishment in Indonesia cannot be separated from written rules derived from the Dutch colonial legacy of *Wetboek van StrafrechtvoorNederlandsch Indie (WVS NI)*. Seeing the historical background of the enactment of the Criminal Code (KUHP), there are suggestions from some criminal law experts that the existing Criminal Code in Indonesia needs to be reformed (criminal law reform). On the other hand, in origin country, the criminal law has actually also undergone several times changes adapted to the development of era.

Essentially, criminal law reform is a manifestation of changes and reforms of various aspects and policies underlying the need for criminal law reform. Thus, the reform of criminal law being carried out has meaning, in an attempt to re-orient and criminal law reform in accordance with the socio-political, socio-philosophical, and socio-cultural values of society. In general, the national law to be realized must take into

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<sup>1</sup> Majda El Muhtaj, 2015, *HakAsasiManusiadalamKonstitusi Indonesia: Dari UUD 1945 sampaidenganPerubahan UUD 1945 Tahun 2002*, KencanaPrenada Media Grup, Jakarta, p. 226

<sup>2</sup> Bytyqi, V. (2017). The State's Obligation to Protect the Individuals Lives from the Consequences of Domestic Violence. *Hasanuddin Law Review*, 3(1), 27-35. doi:<http://dx.doi.org/10.20956/halrev.v3i1.897>

account the differences in socio-cultural background and legal needs that owned by certain groups. Therefore, the dimensions of the development of national law towards the national legal system that we aspire i.e.the dimensions of maintenance, reform, and creation as much as possible are using the insight of the development of national law.<sup>3</sup>

One of the important elements of the legal State according to Frederich Julius Stahl is the legal protection against human rights, which is one of the 4 (four) pillars of the legal State which includes: the protection of human rights, power-sharing, rule-based governance and civil service arbitration tribunal.<sup>4</sup>As well as stated by the International Commission of Jurists (ICJ) that one of the main principles of the legal State is that the government must respect the rights of individuals under the rule of law.<sup>5</sup>

With these weaknesses, emerge the idea of a punishment system oriented to the recovery of losses and suffering of victim, it known as restorative justice approach. The concept of restorative justice is proposed to reject coercive means and replace it with reparative means: restorative justice accommodates the interests of the parties, including victims as victims are involved in the determination of sanctions for restorative justiceactors to return conflicts to those most affected (victims, actors and their communities”) and give priority to their interests. Restorative justice seeks to restore victims’ security, personal respect, dignity, and more importantly a sense of control. By embracing the paradigm of restorative justice, it is expected that the losses and suffering experienced by the victim and his/her family can be recovered and the burden of guilt of the offender can be reduced because he gets forgiveness from the victim or his/her family.

One of the fundamental weaknesses of the Court Law of Human Right is no regulate the legal obligations of investigators, prosecutors and human rights courts to ensure the protection of victims and witnesses. This law only regulates victims and witness’ rights to physical and mental protection from threats, harassment, terror and violence from any party, as affirmed in article 34 Paragraph (1).<sup>6</sup>Human rights as an integral part of the concept of a legal State have implications for the existence of constitutional recognition that the guarantee of human rights protection is a modern Indonesian constructive element.<sup>7</sup> As experienced by various other countries during the political transition period, in Indonesia, during the reform era there have been various demands to resolve cases of seriushuman rights violations.<sup>8</sup> Also, related to the indictment of concrete efforts to protect certain vulnerable groups in our society, for example women, children, parents, indigenous peoples, and so forth.<sup>9</sup>In the case of serious human rights violations, the State should be responsible as both parties, those responsible for enforcing human rights on the one hand, and be responsible for the offenses committed by commission or byomission by the actors on behalf of the State. Jamil Salmi explains how all forms of human rights violations that occurred at the end are related to the State’s obligations both for human rights enforcement as well as those responsible for violations occur.<sup>10</sup>

## **II. METHOD OF THE RESEARCH**

The research uses a type of normative-legal research that will be complemented by a socio-legal approach or a legal approach in a perspective of sociological. To support the type of normative law research, the writers supplement some commonly used approaches to legal research, such as case-study, legal, philosophical, conceptual, and comparative-legal approaches, and historical approaches.The research will be conducted in Papua Province, as one of the areas in Indonesia where there has been a serious violation of human rights in the past. The research sites were conducted at the offices of the Governor of Papua, DPRP, regional police, and community institutions. The data analysis technique used is qualitative analysis to analyze the data and the results obtained in the research, both primary and secondary data so that it can be presented in the form of

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<sup>3</sup> I Dewa Made Suartha, 2015, *HukumdanSanksiAdat*,Setara Press, Malang, p. 296

<sup>4</sup>JimlyAsshiddiqie, 2005, *Konstitusi&KonstitusionalismeIndonesia*,Konstitusi Press, Jakarta, p. 151-152

<sup>5</sup>BambangWaluyo, 2016, *PenegakanHukum Di Indonesia*,PenerbitSinarGrafika, Jakarta, p. 2.

<sup>6</sup>SuparmanMarzuki, 2015, *TragediPolitikHukum HAM*, PUSHAM UII, Yogyakarta, p. 347

<sup>7</sup>Majda El Muhtaj, 2015, *Dimensi-Dimensi HAM: MenguraiHakEkonomi, Sosial, danBudaya*,PT Radjagrafindo Perkasa, Jakarta, p. 59

<sup>8</sup>Satya Arinanto, 2005, *HakAsasiManusia, dalamTransisiPolitikDi Indonesia*,Universitas Indonesia, p. 279.

<sup>9</sup>Hamid Awaluddin, 2012, *HAM: Politik, Hukum, KemunafikanInternasional*,KOMPAS, Jakarta.p.8

<sup>10</sup>Majda El Mhtaj, Op. Cit, p. 69.

explanation and description which is expected to reveal and understand the objective facts of the research until arrived at the conclusion of the problem formulation.

### **III. LEGAL INSTRUMENT OF SERIOUS HUMAN RIGHTS VIOLATION**

A long history of suffering of the Papuan people has occurred since the Dutch colonial era until now, where there are many problems of serious human rights violations. Based on the results of literature research through document and field research through interviews and field observation can be seen indicator of the forms of serious human rights violations in Papua are (1) murder, (2) genocide; and (3) humanity. Human rights as mentioned in article 1 point 1 of Act No. 39 of 1999 on Human Rights: "a set of rights inherent in the nature and existence of human beings as creatures of God almighty and is a gift that must be respected, upheld And protected by the State, law, government and every person for the honor and protection of human dignity and prestige."

Whereas human rights violations as mentioned in article 1 point 6 of Act No. 39 of 1999 on human rights is any action of a person or group including the apparatus whether intentional or unintentional, or negligence which unlawfully reduces, obstructs, restrict and/or deprive the human rights of any person or group guaranteed by this law, and does not get, or is feared will not obtain a fair and just settlement, based on applicable legal mechanisms. In the events of violence in Paniai that occurred on 7-8 December 2014 indicated the occurrence of various forms of human rights violations experienced by Papuan. The alleged forms of human rights violations that occurred in the event include the revocation of right to life which is a non-derogable rights, the right to be free from oppression, the right to security, and child rights. The guarantee of fulfillment and human rights protection is clearly stated in the applicable laws and regulations.

The law substance is an aspect relating to legal or regulatory arrangements. The legal arrangements relating to the application of the principles of restorative justice that can be described as follows:

#### **1.1 Act No. 39 of 1999 on Human Rights**

The right to life is a part of the right that cannot be reduced under any circumstances (non-derogable right). The guarantee of right to life is stated in article 4 of Act No. 39/1999 that, "the right to life, the right not to be tortured, the right of personal freedom, thought and conscience, the right to religion, the right not to be enslaved, the right to be recognized as personal and equality before the law, and the right not to be prosecuted on the basis of retroactive law is a human right that cannot be reduced under any circumstances by any person."

The explanation of article 4 of Act no. 39 of 1999 on Human Rights further explains the meaning of "cannot be reduced any circumstances" including war, armed conflict, and/or emergency situations. In addition to article 4, in Act No. 39 of 1999 on Human Rights the right to life is also stipulated in article 9 paragraph (1) that: "everyone has the right to live, defend the live and to improve his/her standard of living."

The right to security is one of the basic human rights, in which the right to security means not only in the physical, psychological sense but also the right to the security of property. It is impossible for anyone to enjoy the right to life, the right to work, and so on if he/she does not have a high level of security. This protection is also reinforced in article 29 of the Human Rights Acts that: "everyone has the right to personal protection, family, honor, dignity and her/his property rights." This means that in normative jurisdiction of the right to security for every person and Indonesian people has been guaranteed by Act no. 39 of 1999 on Human Rights. The protection of children's rights arises in a concrete form, namely in article 63 of the Human Rights Acts which affirms that: "every child has the right not to be involved in the events of war, armed conflict, social unrest and other incidents of violence." In addition, article 63 of Act no. 39 of 1999 also states that every child should be given protection and not involved in the event of social unrest that contains elements of violence. Child protection from torture is expressly affirmed in article 66 that "every child has the right not to be subjected to torture, castigation or inhuman punishment."

#### **1.2 Act No. 21 of 2001 on Special Autonomy of Papua**

The history of community life in Papua is full of human rights violations. Dissatisfaction of Papuan as a result of various policies from the central government that is considered discriminatory so that the impact of

the emergence of various opposition or rejection. Military operations by the security forces in Papuan will inevitably lead to various forms of human rights violations, which are not impossible for the victims to be largely civilians who are not at all involved with rebellious activities, as alleged by the government. A number of parties believe that the root cause of the growing resistance of some Papuan community groups is that until now there is no fair resolution process for various human rights violations that occurred in Papua.

Victims and their families continue to strive for the resolution of various forms of human rights violations to obtain justice in the form of prosecuting perpetrators and demanding compensation for victims. The struggle of victim for justice is done through various ways either through customary institutions, religious institutions, non-governmental organizations and to the National Commission of Human Right, even to the international world.

Although it has been granted special autonomy, including in the management of a larger portion of the budget, but in the implementation of Special Autonomy for Papua Province was not enough to touch justice for Papuan. This can be seen by the many imbalances felt by the community so that their level of life has not yet experienced a prosperous change as they are less touched by the special autonomy program. This condition is exacerbated by the absence of seriousness of the government to investigate and to resolve various human rights issues in the past, especially on the events whose investigations have been completed by the National Commission of Human Right such as Wamena and Wasior events. This condition is exacerbated by the absence of Human Rights Court and Truth and Reconciliation Commission as mandated in the special autonomy law.

### **1.3 Act No. 12 of 2005 on the Ratification of the International Covenant on Civil and Political Rights**

Based on Act No. 12 of 2005 on the Ratification of the Covenant on Civil Rights states that right to life are one of the rights which fall into the category of absolute rights which should not be diminished by non-derogable rights even in emergency state. Referring to this covenant, the States are obliged to respect and to guarantee the rights recognized and assigned to individuals within the territory and subject to their jurisdiction without any discrimination.

Article 6 of paragraph (1) of the Covenant on Civil Rights contains provisions on the right to life, that “every human being has the right to life inherent in him/her. This right must be protected by law. No one can be deprived of his/her right to life arbitrarily.” It is seen from the formula that the right to life has specificity, that is, by the existence of a word inherent. According to Article 6 on General Comment that the Covenant on Civil Rights, as the right to life is the highest right that its fulfillment cannot be reduced even in emergency state. Therefore, the State has the highest obligation to prevent war and other violence that lead to arbitrary loss of life. Each of these efforts is the most important condition in guaranteeing and protecting the right to life.

### **1.4 Act No. 23 of 2003 on Child Protection**

Children are trust and grace of God almighty and inherent in their dignity as a whole person. The child is the bud, the potential, and the younger generation successor ideals of the nations’ struggle, has a strategic role and special features and traits that guarantee the continuity of the existence of nation and State in the future. Every child has the right to survival, growth and development and protection from violence and discrimination.

The Unitary State of the Republic of Indonesia in ensuring the welfare of every citizen is to provide protection to the rights of the child which is one of human rights. The Government of Indonesia in its efforts to ensure and realize the protection and welfare of children is through the establishment of Act No. 23 of 2002 on Child Protection. Child protection as referred to in the Act is all activities to guarantee and protect children and their rights in order to live, to grow, to develop and to participate optimally in accordance with the dignity of humanity, and get protection from violence and discrimination.

### **1.5 Act No. 26 of 2000 on Human Rights Court**

The Province of Papua cannot be separated from the events of human rights violations, both in the past and to the present. In relation to the human rights violations, the National Commission of Human Right has established one of the violent incidents in Abepura and Wasior as crimes and humanity incidents, which is one of the most serious forms of human rights violations, but has not yet been investigated.

In relation to the implementation of law enforcement, according to Friedman, the legal system consists of 3 (three) elements that mutually influence each other, namely:<sup>11</sup> The legal substance, which concerns aspects of legal arrangements or laws and regulations; the legal structure, i.e law enforcement agencies and law enforcement apparatus existing within the institution; and legal culture, the social mood and social forces that determine how the law is used, avoided or abused or in other words is the behavior of society.

Referring to Froedman's description, there are obstacles to the prosecutor in applying the system of settlement of criminal cases outside the court through restorative justice approach, along with efforts to be done to overcome it, will be reviewed from 3 (three) elements, which include elements of legal substance, legal structure and legal culture.

#### **IV. INSTITUTIONAL ASPECT OF LAW ENFORCEMENT OF SERIOUS HUMAN RIGHTS VIOLATIONS**

##### **1.6 Prosecution as Mediator**

When associated with applying the principles of restorative justice by the prosecutor as a law enforcement agency, the biggest obstacle to prosecutors is that to date, there is no regulation that authorizes the prosecutor to settle criminal cases outside the court, especially against minor crimes. That many minor cases that reached the court have become the public spotlight. The only regulation which regulates sufficiently the application of restorative justice by the prosecutor (as well as other law enforcers) currently in force is the provisions contained in Act No. 11 of 2012 on the Children Justice System. In Act No. 11 of 2012, the settlement of child criminal cases through the mechanism of diversion, namely the transfer of settlement from criminal justice process to process outside of criminal court. These efforts should be pursued in every stage of the judicial process. Currently, there is a provision of article 8 paragraph (4) of Act No. 16 of 2004 which encourages prosecutors to act on the basis of law by observing religious norms, modesty, decency, and obliged to dig up and uphold the values of humanity living in society and always maintain the honor and dignity of the profession in carrying out its duties and authorities. However, since there is no regulation on the authority of the prosecution to resolve cases outside the court, the provisions cannot be applied as a basis for the implementation of restorative justice by the prosecutor. The primary means for prosecutors in the discovery of law is to use the principle of opportunity.

The efforts to resolve criminal cases outside the court using restorative justice approaches, especially to minor cases cannot be implemented by prosecutors. Therefore, there needs to be a law and regulatory reform so that prosecutors can apply restorative justice principles through the mechanism of settling criminal cases outside the court. In the reform, the principle of opportunity should be given to every prosecutor who handles cases not only to the authority of attorney general. In addition, the meaning "for public interest" should also be extended and in disregarding the case does not necessarily require consideration from other agencies.

However, according to the writer, it is necessary to add rules that allow prosecutors to act as mediators and to initiate reconciliation between perpetrators and victims. In addition, with the provision that allows prosecutors to act as mediators and initiate reconciliation among perpetrators and victims, it is expected to provide certainty for the community, especially perpetrators and victims, that a reconciliation between the parties can eradicate the right of prosecutor to prosecute.<sup>12</sup> Given the certainty is expected to encourage the perpetrators to consciously and voluntarily carry out the punishment as agreed upon in the reconciliation forum. If this is done, then the victim will also get the benefits, i.e demands are met voluntarily by the perpetrator. This is expected to create tranquility and peace in the life of society.

##### **1.7 Re-actualization of Customary Institutions' Role**

The role of customary institutions in the process of solving serious human rights violations is seen in the incident of Intan Jaya on 27 August 2016 in Kampung Sugapa. The incident started at 11.30 WIT, 4 youths sitting in front of Sugapa Police (precisely on the road side while drinking alcoholic) and suddenly there was a large truck passing, and one of the youths stopped in order to ask for cigarettes. But because the driver answered

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<sup>11</sup>Lawrance M. Friedman, 2001, *Hukum Amerika: Sebuah Pengantar*, (Translated: Wisnu Basuki), Tata Nusa, Jakarta.

<sup>12</sup> Roy, S. (2017). Vulnerability of Elderly Women: Victim of Gender Discrimination. *Hasanuddin Law Review*, 3(1), 1-13. doi:<http://dx.doi.org/10.20956/halrev.v3i1.560>

no cigarettes, they asked for money, but the driver then turned his car then headed to the Brimob headquarters and then the driver with the Brimob members chased into the youths' place.

At first the youths argued with members of Brimob, and then they ran apart. One of the young chased by Otianus Sandagau was shot in front of his house. The big families of Sandagau and Dewitauw did not want to bury the corpse, they demanded that life should be replaced with life. 4 (four) days the corpse was detained at the home of Matthew Pakiri, Maria Duwitauw and Thomas Sandagau had time to negotiate with the victims' family. Otianus was soon buried before the demands of the victims' families were discussed.

Finally, with the restorative justice approach, where the victims' family demanded for 5 billion as compensation for the decease of Otianus, there was bargaining with the involvement of customary institutions and the Regent of Intan Jaya, where the government of Intan Jaya bear the compensation cost of Rp.700.000.000,- (seven hundred million) and the Police bear the cost of Rp.150.000.000, - (one hundred and fifty million) plus ikulitbia bare. In addition, the victims' family requested that the perpetrator be released as a member of the Police.

### **1.8 Justice Value in Restorative Justice Approach**

Justice value is a state in which a person or community gets what they or their rights are entitled to.<sup>13</sup> This definition explains that there is individual and communal justice. Individual justice when a person or individual gets what the person or individual entitles to. Thus, it is implied that every person or individual has the right. The communal justice, if the community or group gets what the rights of the community entitles to.

Not all types of justice will be presented in this dissertation, so that is presented only about restorative justice. The basic principles of restorative justice are as follows: The first, restorative justice prioritizes restoration for all parties affected by crime, i.e victims, perpetrators, and communities. The victim is the first party most harmed by the crime. The victim is directly afflicted by the crime. Criminals suffer losses too, by committing the crime, the criminal experiencing a mental deterioration. From this damaged condition, restorative justice aspires to restore the three parties. The victim is recovered from physical injuries, emotional, and all other damages. The perpetrator is restored his honor and dignity as a human person. The order of life together also wants to be restored. Here, restorative justice does not focus on punishing offenders, but restoring all those who are harmed by crime.

The second, in relation to the restoration ideals above, restorative justice focuses on the needs of the three parties, the victims, the perpetrators, and community, which are not met by the judicial process. In the process of justice the victims of crime are ignored, since crime is understood as an act against or against the State. The role of victim is taken over by the State. The State has the responsibility to punish the perpetrators of crime, while the victims do not get any rights. The punishment given to the perpetrator has nothing to do with the suffering of the victim. In this case, the needs of victims are ignored. Therefore, the restorative justice will focus on the needs of the victims.

The perpetrator has a different need to the victims' needs. As a human person, he needs the opportunity to account for his actions. He needs time to confess his crimes and the effects of his evil actions. Based on the recognition, then agreed with the compensation to be borne by the perpetrators that will be given to the victim. Such confess is not possible in the judicial process, because what happens in the judicial process is a trial that conveys allegations and allows criminals to deny or defend themselves. The responsibility and confession of perpetrator will occur when such dialogue and conversation will occur in a meeting between the victim and the perpetrator following the principle of restorative justice.

The third, restorative justice takes into accounts the obligations and responsibilities arising out of a crime. The perpetrator is obliged to recover the damage suffered by the victim, and the community. The obligation to the victim is done first of all by admitting that he is guilty. This recognition is important; as it is a proof of confess. The victim needs to be heard to confess her suffering. Such confess is an important process in healing the mental and mental suffering of the victim. In addition, the perpetrator has an obligation to restore physical and material suffering. This obligation can be met by compensating to pay for the cost of healing the physical injuries and replacing the loss of material of the victim.

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<sup>13</sup> Peschke Karl H., 1994, *Christian Ethics. Moral Theology in the Light of Vatican II*, Manila : Divine Word Publication, p. 232-235.

According to the theory of restorative justice, the definition of crime above is no longer appropriate for this secularized age. Today, the divine and universe orders are no longer the thinking center of society today. Currently, crime is understood as an act of injuring the victim and his family, as well as damaging the condition of society. Then the wound must be restored so that the trauma experienced by the victim is healed, so that the victims and perpetrators are restored, and the reconciliation in the community is restored.

Hence, as outlined, the focus of restorative justice rests on the recovery and reconciliation of victims, perpetrators, and communities. To achieve this goal, the reconciliation process pursued by restorative justice involves all parties, victims, families, communities, and perpetrator. In contrast to the judicial process involving only officials in judicial institutions such as judges and prosecutors as well as perpetrators and their defenders, restorative justice involves all parties concerned with crimes, victims, perpetrators and the community. Restorative justice minimizes the role of government.

Restorative justice does not emphasize the punishment that the perpetrator must commit, but the compensation that must be paid to recover damages and losses suffered by victims and community. In determining the magnitude of this compensation also conducted a joint discussion involving victims and the community. A punishment of whatever magnitude the perpetrator does will heal the wounds of the victim and the damages of society. But compensation negotiated together in deliberations involving perpetrators, victims, and communities will restore and reconcile all parties.

Restorative justice is based on the view that in human life there is a network of relationships between one person and another, an institution and a community with other institutions. If there is a violation of the relationship, for example with a crime, then the harmony network is broken. So, to restore the relationship network, there must be a joint meeting between the parties involved in the relationship.

In contrast to the view of the legal system that views crime as a violation to the state or community. Crime is a violation to the victim. Those who bear the impact of crime are first victims, then communities and the breakers. So unlike the court system that emphasizes punishment for perpetrators, the principle of restorative justice emphasizes restoring the relationship of the offender to the victim and the community. The perpetrators or offenders must compensate for the damage received by victims and the community. The penalty for victims applied in the court system is often less effective.

The principles of restorative justice prioritize the needs of victims, the responsibility of the perpetrators and the community, since crime is a direct affair of victims, perpetrators, and community. The crime should not be taken over by the State through a judicial process which then punishes the perpetrator, while the victim and the community are ignored. So, communities must be actively involved in solving existing crime problems. As much as possible the problems of crime are solved by the community or existing community groups, do not need to be brought to the judicial process. Of course, if those cases are resolved with a restorative approach that prioritizes the restoration of relations and togetherness, what happens is quite the opposite. Reconciliation and harmony will happen, because all parties are appreciated and get justice.

The unfinished resolution of unresolved violations of human rights violations to events in Wasior, Wamena, Abepura and Paniai from overtime is a fact that the lack of law enforcement agencies, so that the small people have to take to the streets to gather urgent powers and even force enforcement agencies to demands and prosecutes the offenders. It is ironic, the institution that should be the place and the hope of the justice seeker, precisely keep it away, which should preserve the dignity and self-esteem of the law, insulting him, which should be the locomotive of law formation but it come out of the railroad. Hence, in the preparation of law enforcement of serious human rights violation, in Indonesia it takes the presence of law enforcement officers who have fair vision and a just ruler. The first law enforcement tool to deal with the perpetrators of crimes according to RahardjoSajipto is the police but how could this be possible, if the police themselves become crime actor against humanity in various incidents of serious human rights violations in Papua.

## **V. CONCLUSION**

The violation of human right in Papua from murder, genocide and against humanity are seen in the events of Wasior, Wamena, Abepura, Paniai for overtime and also the events of Intan Jaya, and for genocide crime is only in Paniai. It is against the values of Pancasila and the application of the theory of justice from Hans Kelsen and Thomas Aquines. Justice comes from rational ideals, the settlement of a conflict of interest can

be achieved by a compromise to a reconciliation for all interests. The realization of legal supremacy through restorative justice for serious human right violation now there is indeed provision of article 8 paragraph (4) of Act No. 16 of 2004 which encourage prosecutor to always act based on law by observing religious norms, morals, and obliged to dig and uphold high values of humanity in society and always maintain the honor and dignity of his/her profession in carrying out his/her duties and authorities. However, since there is no regulation on the authority of the prosecution to settle the case outside the court, the provision cannot be applied as a basis for the implementation of restorative justice by the prosecutor. Similarly, the restorative justice approach by customary institutions and local governments collided on the budgetary inventory by the local government in the implementation of compensation for victims or families as result of serious human rights violations in Papua.

The government needs to issue a legal regulation on the implementation of the provisions of Article 8 paragraph (4) of Act No. 16 of 2004 which provides the basis for the implementation of restorative justice by the prosecutors and the need for socialization by the relevant institutions towards the law enforcement. The government of Provincial, District and Municipal need to apply restorative justice approach in handling cases of serious human rights violation by involving local customary institutions in the law enforcement of human rights in Papua. Retributive justice is the guard and guarantor of other principles of justice. To provide legal protection not only to victims, the best option is the implementation of restorative justice that provides legal protection to the perpetrators and the victim in solving cases of serious human rights violations in Papua.

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