

## The Authority of the Republic of Indonesia Police (POLRI) in Handling Cases Based on Restorative Justice

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### Abstract

This research aims to investigate the authority of the National Police in managing cases based on restorative justice and ending cases based on restorative justice. varied law enforcement organizations within the criminal justice system in Indonesia have published varied rules, procedures, and legal goods for the implementation of restorative justice for adult offenders. To improve the National Police's strategy for managing criminal cases based on restorative justice, this study is crucial. Norms in statutory regulations and restorative justice principles are examined in this normative research. This research is unique from earlier studies in that it looks at the National Police's discretionary authority in managing cases based on restorative justice as well as the legitimacy of legal products that the National Police issues following the implementation of restorative justice. The conclusion is that, should restorative justice be understood as a method for managing cases with an approach that prioritizes recovery by involving the perpetrator, victim, victim's family, perpetrator's family, and impartial third parties, then the Police's implementation of restorative justice is part of their discretionary authority. In the meanwhile, because SP3 has been limitedly included in Article 109 (2) of the Criminal Procedure Code, its issuance based on restorative justice expands the scope of the police's discretionary jurisdiction.

**Keywords:** Case Termination; Restorative Justice; Police

### 1. INTRODUCTION

The criminal justice system is a mechanism for the operation of criminal law with the aim of controlling crime that occurs in society so that it remains within the accepted limits of tolerance.<sup>1</sup> The criminal justice system is structured by a sub-sub system, which includes the police sub-system with authority to investigate and investigate, the prosecutor's sub-system with the authority to prosecute, the court sub-system with the authority to examine, try, and decide cases, and the correctional sub-system as the executor of punishment.<sup>2</sup> The involvement of various law enforcement agencies with different authorities requires a system perception; namely, the entire working process of the subsystem is based on the same goals and perceptions and is mutually binding.<sup>3</sup>

According to Muladi, the Indonesian criminal justice system is most appropriate to adopt a balance model with reference to *daad-dagger strafrecht*, namely a model that takes into account protection for all elements, in particular the balance of protection of the

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<sup>1</sup> Barda Nawawi Arief, *Reformasi Sistem Peradilan (Sistem Penegakan Hukum Di Indonesia)* (Semarang: Badan Penerbit, Universitas Diponegoro, 2019).

<sup>2</sup> Binsar Zaroha Ritonga and Eko Sopyonyono, "Pembentukan Lembaga Pelaksana Pidana Sebagai Wujud Sistem Peradilan Pidana Integral," *Jurnal Pembangunan Hukum Indonesia* 5, no. 1 (2023): 136–53, <https://doi.org/10.14710/jphi.v5i1.136-153>.

<sup>3</sup> Nursyamsudin Nursyamsudin and Samud Samud, "Sistem Peradilan Pidana Terpadu (Integrated Criminal Justice System) Menurut KUHAP," *Mahkamah: Jurnal Kajian Hukum Islam* 7, no. 1 (2022): 149–60, <https://doi.org/10.24235/mahkamah.v7i1.10413>.

interests of the perpetrator and the interests of the victim.<sup>4</sup> Restorative justice is a notion connected to the balancing model. The restorative justice strategy is expected to allow the perpetrator to recompense for the victim's and family's losses and suffering. Furthermore, the perpetrator's sense of guilt might be reduced by accepting forgiveness from the victim or their family.

The implementation of restorative justice principles is contingent upon the legal framework chosen by a nation, therefore making it possible to consider these ideas as a viable choice in the formulation of a country's legal system.<sup>5</sup> The criminal justice system in Indonesia follows a restorative justice strategy when dealing with situations involving children who have committed crimes, as outlined in Law (UU) Number 11 of 2012 regarding the Juvenile Criminal Justice System (SPPA). The SPPA Law employs restorative justice as a means to address criminal matters by engaging the offender, victim, their respective families, and other relevant parties in a collaborative pursuit of a just resolution that prioritizes the restoration of the original state rather than seeking revenge.

Indonesia's method of penalizing adult criminals has been greatly influenced by restorative justice. By getting a court verdict, the criminal justice system is thought not to have done justice to the victim. This is because it causes law enforcement agencies to have too many cases and prisons to be overcrowded, which means that the legal goals that should be reached with criminal punishments are not met in the best way possible.

Restorative justice for adult offenders in Indonesia currently lacks solid legislation and is governed only by internal norms of law enforcement. varied procedures for managing restorative justice cases result in varied standards and obligations for law enforcement organizations. Aside from that, there is no uniform understanding of punishment for perpetrators, specifically that the police view restorative justice as dismissing the investigation by issuing an Order to Stop Investigation.<sup>6</sup> This differs from the court's interpretation that the Panel of Judges considers the harmony between the victim and the perpetrator as a basis for mitigating the perpetrator's punishment. Every law enforcement agency exercises discretionary authority when settling cases by employing a restorative justice strategy.

The existence of different arrangements for implementing restorative justice between law enforcement agencies causes the expected coordination in the criminal justice system to not be optimal, for example when an investigator sends a Notice of Commencement of Investigation (SPDP) to the Prosecutor's Office, the Public Prosecutor begins to examine the case files that have been handed over but if the investigator stops cases based on restorative justice without prior coordination with the Public Prosecutor can cause confusion for the

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<sup>4</sup> Ni Ketut Sari Adnyani, "Kewenangan Diskresi Kepolisian Republik Indonesia Dalam Penegakan Hukum Pidana," *Jurnal Ilmiah Ilmu Sosial* 7, no. 2 (2021): 135–144, <https://doi.org/10.23887/jiis.v7i2.37389>.

<sup>5</sup> Muhammad Fatahillah Akbar, "Pembaharuan Keadilan Restoratif Dalam Sistem Peradilan Pidana Indonesia," *Masalah-Masalah Hukum* 51, no. 2 (2022): 199–208, <https://doi.org/10.14710/mmh.51.2.2022.199-208>.

<sup>6</sup> Agustinus Gabriel Rante Ubleeuw and Mulyanto Mulyanto, "Komparasi Pendekatan Restorative Justice Dalam Penanganan Perkara Pidana Antara Kepolisian Dan Kejaksaan," *Jurnal Hukum Dan Pembangunan Ekonomi* 10, no. 2 (2022): 291–305, <https://doi.org/10.20961/hpe.v10i2.64717>.

Public Prosecutor regarding the follow-up to the status of cases that have been submitted to the Prosecutor's Office. Furthermore, if investigators do not notify the Court of the case's termination, the status of the evidence in the case may be uncertain. The Court issued a confiscation order. These conditions can cause legal uncertainty for both the perpetrator and the victim.<sup>7</sup>

Several studies related to this research include research by Fitriana et al (2024) which examines police discretion in implementing restorative justice in handling criminal acts based on Police Regulations Number 8 of 2021.<sup>8</sup> The strength of this research is that it explains the decision-making process by the Bandung City Police Leaders in assessing whether the case meets the complete requirements to be stopped (SP3) in the case that the case is resolved using Restorative Justice, while the weakness is that researchers have not researched further regarding the norms of police authority to stop cases related to Article 109 of the Criminal Procedure Code. In an attempt to change criminal law, Budi conducted a second study looking at different ways to settle criminal cases inside the police.<sup>9</sup> This study's strength is explaining the police's discretionary power to employ criminal mediation for lesser crimes for restorative justice. Researchers have not examined the police difficulty in managing small criminal cases utilizing restorative justice, which undermines legal goods validity. The third study is by Alfano who looks at police discretion in criminal actions from a theoretical and practical standpoint in an attempt to achieve restorative justice.<sup>10</sup> The Chief of Police Circular Number: SE/8/VII/2018 still applies to the procedures for Police Investigators in exercising discretion. Thus, it has not yet thoroughly discussed the termination of investigations and inquiries carried out by the National Police based on Police Regulation 8 of 2021. The merits of this research illustrate the legal repercussions of investigators' discretion and how Sleman investigators handle criminal cases with discretion.

To be used as input and consideration by the police in developing policies for implementing integrated restorative justice, this study differs from earlier research in that it focuses on examining the police's discretionary authority in handling cases based on restorative justice as well as the legality of legal products issued by the police after restorative justice implementation. The purpose of this study is to investigate the National Police's jurisdiction in managing instances involving restorative justice and in ending such cases.

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<sup>7</sup> Violita Citra Kusuma Dewi, Ali Muhammad, and Cahyoko Edi Tando, "Koordinasi Antara Institusi Penegak Hukum Dalam Hal Menangani Masalah Penahanan Berdasarkan KUHAP Sebagai Upaya Mewujudkan Sistem Peradilan Pidana Terpadu Di Indonesia," *Jurnal Pendidikan Dan Konseling (JPDK)* 4, no. 6 (2022), p. 2668. <https://doi.org/10.31004/jpdk.v4i6.8619>.

<sup>8</sup> Fitriana Sidikah Rachman and Putri Jasmin Zahira, "Tinjauan Diskresi Kepolisian Dalam Penerapan Restorative Justice (Keadilan Restoratif) Pada Penanganan Tindak Pidana Berdasarkan Perpol Nomor 8 Tahun 2021," *Causa: Jurnal Hukum Dan Kewarganegaraan* 2, no. 8 (2024): 75–90, <https://doi.org/10.3783/causa.v2i8.2442>.

<sup>9</sup> Budi Heriyanto, "Alternatif Penyelesaian Perkara Pidana Menggunakan Mediasi Penal Dalam Diskursus Diskresi Kepolisian," *Transparansi Hukum* 5, no. 2 (2022): 36–48, <https://doi.org/10.30737/transparansi.v5i2.3055>.

<sup>10</sup> Alfano Ramadhan, "Diskresi Penyidik Polri Sebagai Alternatif Penanganan Perkara Pidana," *Lex Renaissance* 6, no. 1 (2021): 25–41, <https://doi.org/10.20885/JLR.vol6.iss1.art3>.

## 2. METHOD

This study pertains to legal research. The legal research utilizes primary legal materials, secondary legal materials, tertiary legal materials, and non-legal materials as supplementary sources.<sup>11</sup> The problem approach in legal research employs two approaches: the statutory approach and the conceptual approach.<sup>12</sup> The conceptual technique is used to comprehend concepts connected to the study object, whereas the statutory approach is applied to distinct legal rules.

Techniques and procedures for gathering legal materials by investigating various ideas, and opinions of legal experts, governments, and legislative institutions to determine the concept of criminalization/decriminalization of activities in legislation.<sup>13</sup> Legal materials are collected and analyzed in accordance with the legal issues highlighted.<sup>14</sup> Then, a conclusion is reached by delivering a prescription.

## 3. RESULTS AND DISCUSSION

### 3.1 The Jurisdiction of the Police in Cases Involving Restorative Justice

The definition of authority according to Prajudi Atmosudirdjo is formal power that comes from legislative power (given by statutory regulations) or from executive power over a group of organs (institutions) or certain fields, which consists of several authorities.<sup>15</sup> This authority can be obtained through attribution, delegation, or mandate.<sup>16</sup> The authority obtained from absolute attribution comes from statutory mandates which are explicitly contained directly from the editorial articles in the Constitution or certain laws so that responsibility and accountability rests with the recipient of the attribution authority. The authority for attribution can only be changed and expanded by making changes to the Constitution or Law.<sup>17</sup> Then delegation authority is the authority that is transferred from the attribution authority of one organ to another organ so that the recipient of the delegation is responsible to the person giving the delegation. Delegation authority can be revoked or withdrawn by the person giving the delegation if the recipient of the delegation abuses and/or abuses their authority.<sup>18</sup> Furthermore, authority based on a mandate is the authority

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<sup>11</sup> Andi Desmon, Rina Rahma Ornella Angelia, and Rahmi Erwin, "Pemeriksaan Setempat Oleh Hakim Dalam Perkara Pidana," *Jurnal USM Law Review* 6, no. 1 (2023): 345, <https://doi.org/10.26623/julr.v6i1.6805>.

<sup>12</sup> Yati Nurhayati, Ifrani Ifrani, and M Yasir Said, "Metodologi Normatif Dan Empiris Dalam Perspektif Ilmu Hukum," *Jurnal Penegakan Hukum Indonesia* 2, no. 1 (2021): 1–20, <https://doi.org/10.51749/jphi.v2i1.14>.

<sup>13</sup> Kornelius Benuf and Muhamad Azhar, "Metodologi Penelitian Hukum Sebagai Instrumen Mengurai Permasalahan Hukum Kontemporer," *Gema Keadilan* 7, no. 1 (2020): 20–33, <https://doi.org/10.14710/gk.2020.7504>.

<sup>14</sup> Tunggul Ansari Setia Negara, "Normative Legal Research in Indonesia: Its Originis and Approaches," *Audito Comparative Law Journal (ACLJ)* 4, no. 1 (2023): 1–9, <https://doi.org/10.22219/aclj.v4i1.24855>.

<sup>15</sup> Farrel Eden Surbakti and Ali Abdilah, "Perbandingan Kedudukan Dan Kewenangan Kepolisian Dalam Konstitusi Yang Pernah Berlaku Di Indonesia," *Jurnal Hukum & Pembangunan* 51, no. 1 (2021): 146–58, <https://doi.org/10.21143/jhp.vol51.no1.3012>.

<sup>16</sup> Danel Aditia Situngkir, "Mengenal Teori Demokrasi Dan Teori Kewenangan Dalam Ilmu Hukum," *Ensiklopedia of Journal* 5, no. 4 (2023): 8–14, <https://doi.org/10.33559/eoj.v5i4.1745>.

<sup>17</sup> Moh Gandara, "Kewenangan Atribusi, Delegasi, Dan Mandat," *Khazanah Hukum* 2, no. 3 (2020): 92–99, <https://doi.org/10.15575/kh.v2i3.8167>.

<sup>18</sup> Momos Endrico and Tjempaka Tjempaka, "Analysis of the Validity of Authentic Deeds and Legal Responsibility of Notaries in Land Mafia Cases," *Edunity Kajian Ilmu Sosial Dan Pendidikan* 2, no. 8 (2023): 879–94, <https://doi.org/10.57096/edunity.v2i8.117>.

of another organ (mandatory) to act on behalf of the mandate giver (mandator), in this case there is no transfer of authority to the recipient of the mandate (mandatory).<sup>19</sup>

Based on this source of authority, the police as a state institution has attribution authority in enforcing laws relating to criminal justice based on the provisions of the Criminal Code, Criminal Procedure Code, and other criminal laws. Furthermore, Article 30 paragraph (4) of Chapter Then the duties and authorities of this institution are further regulated in Law Number 2 of 2002 concerning the State Police of the Republic of Indonesia.

Based on its nature, there are three types of authority, namely binding, facultative and independent authority. First, namely, authority that is bound, namely authority that must comply with the basic rules that determine the time and circumstances in which the authority can be exercised, including the basic formulation of content and decisions that must be taken. It regulates the conditions under which authority is exercised. This requirement is binding on government organs when exercising their authority and requires compliance with the basic rules in question when authority is exercised. Second, authority is facultative, namely the authority possessed by administrative bodies or officials. However, there is no obligation or necessity to use this authority, and more or less, there are still other options. Third, authority is free or discretionary, that is, the authority of government bodies or officials (administration) can use their authority freely to determine for themselves the content of the decision to be issued, because the basic regulations provide freedom to the recipient of that authority.<sup>20</sup>

The police possess attribution authority as stipulated in Article 16 of Law No. 2 of 2022. This authority grants them the power to conduct preliminary and full investigations, as well as enforce coercive measures such as confiscation, search, arrest, and detention. Nevertheless, obtaining authorization from the nearby District Court is necessary for carrying out these measures. The police are bound by the broad rules of criminal procedure law, namely the Criminal Procedure Code, when executing their authority.

The Police have the ability to carry out law enforcement activities, as regulated in Article 16, paragraphs 1 and 2, of Law no. 2 of 2002. To carry out the duties outlined in Articles 13 and 14 in the field of criminal justice, the State Police has the authority, among other things, to conduct arrests, detention, searches, and seizures, to prohibit anyone from leaving or entering the scene of a crime for investigative purposes, and to bring in and present people. to investigators in the context of an investigation, ordering people under suspicion to stop and ask and check their identities, inspecting and confiscating documents, summoning people to be heard and examined as suspects or witnesses, bringing in the necessary experts in connection with the case examination, stopping the investigation,

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<sup>19</sup> Eldarifai Eldarifai et al., "Delegation of Authority in Islamic Education," *International Journal of Education, Vocational and Social Science* 3, no. 01 (2024): 90–106, <https://doi.org/10.99075/ijevss.v3i01.647>.

<sup>20</sup> Agustina Wati, Bayu Prasetyo, and Siti Kotijah, *Pengantar Kekuasaan Diskresi Pemerintahan*, Pustaka Horizon (Yogyakarta: Lingkar Media, 2019).

submitting case files to the public prosecutor, submitting a request directly to the authorized immigration official at the immigration checkpoint in an urgent.

Other actions, as defined in paragraph (1) letter I, are investigative actions carried out if they fulfill the following conditions, do not violate statutory restrictions, and are in compliance with the legal responsibilities that require such actions to be carried out. suitable, reasonable, and within the boundaries of his/her position; reasonable considerations based on compelling circumstances; and protecting human rights.

As per Article 1, point 5, an investigation refers to a sequence of investigative measures undertaken to uncover and ascertain a suspected criminal incident, with the purpose of determining the feasibility of conducting an investigation in accordance with the prescribed procedures outlined in the Criminal Procedure Code. Meanwhile, an investigation, as defined by Article 1 point 2 of the Criminal Procedure Code, is a systematic process conducted by an investigator. It involves specific actions and methods outlined in the Criminal Procedure Code to search for and gather evidence. The purpose of this process is to uncover the details of a criminal act and identify the individual responsible. According to this definition, the distinction between an investigation and an investigation lies in their respective objectives. An investigation aims to locate and uncover a suspected criminal act, while an investigation focuses on gathering evidence to establish the details of a criminal case and identify a suspect. This strategy was implemented to mitigate mistakes in the utilization of coercive tactics employed by law enforcement throughout the court proceedings.<sup>21</sup>

Apart from the above powers, the Police are also given other powers according to the law which are called discretionary powers. Discretionary authority is a power or authority exercised by the Police based on law based on considerations and beliefs with greater emphasis on moral considerations.<sup>22</sup> Police discretion, as defined in Article 15 Paragraph 2 letter k, is referred to as "other authority". Similarly, Article 16 Paragraph (1) letter l refers to it as "other responsible actions according to law", and Article 7 paragraph 1 (J) of the Criminal Procedure Code defines it as "any action according to the law that is responsible".

The parameters governing the exercise of discretionary authority by law enforcement are specified in Article 16, Paragraph (1) of the Police Law and the Elucidation to Article 5 Paragraph (1) Letter No. 4 of the Criminal Procedure Code. Specifically, the exercise must adhere to legal obligations that mandate the action to be executed, be appropriate and reasonable, and take into account reasonable considerations based on compelling circumstances.

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<sup>21</sup> Sindhi Cintya and Hery Firmansyah, "Penerapan Restorative Justice Sebagai Bentuk Permaafan Hakim Dalam Tindak Pidana Pencurian Oleh Lansia," *Jurnal USM Law Review* 6, no. 2 (2023): 543, <https://doi.org/10.26623/julr.v6i2.6379>.

<sup>22</sup> Edi Saputra Hasibuan and M H SH, *Hukum Kepolisian Dan Criminal Policy Dalam Penegakan Hukum* (Depok: PT. RajaGrafindo Persada-Rajawali Pers, 2021).

The authority to exercise discretion by the Police is based on considerations of their need to carry out their duties (*Flichtassiges Ermessen*).<sup>23</sup> This is necessary because the rules cannot cover comprehensively and in detail how each official deals with events that occur, so subjective considerations and policies from the public officials concerned are needed to carry out their duties smoothly.<sup>24</sup> Discretion which is categorized as the authority of subjective police policy cannot be applied immediately, but must be implemented in accordance with standard operational procedures and fulfill certain requirements.<sup>25</sup> Law enforcement is affected by Police Discretion since it forces applicable and current laws to face the reality of people's lives. Those legislative requirements will be implemented if objective evaluations indicate that they are the most suitable answer to the issue of all other available options. Conversely, the legal provisions will not be implemented, i.e., they will be ignored or suppressed if they are not advantageous, much more so if they will result in circumstances and conditions that are worse than before.<sup>26</sup> Therefore, normatively, the use of discretion by the police must consider the benefits and risks of its actions and is truly in the public interest.<sup>27</sup>

Police discretion may be used to apply the law or to create it even when its reach is restricted and transient, as when it is used to prosecute cohabitation or *leven cement* offenders. Though it is not a legal crime, the community finds cohabitation to be so heinous that the police have the authority to order the two offenders to leave the area or to get married right away in order to prevent unfavourable events from occurring. Disillusionment with civilization<sup>28</sup> Apart from that, social engineering and legislative development can also be examples of police discretion in addressing cases based on restorative justice.<sup>29</sup>

The concept of discretion with a scheme that involves victims (victims' participation scheme) in the investigation process requires a change in the usual "closed" pattern to be more "open" and opens up space for victims' participation. This scheme can provide benefits in the form of restorative, especially the recovery and rehabilitation of victims.<sup>30</sup>

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<sup>23</sup> Derry Angling Kesuma, "Kewenangan Diskresi Kepolisian Republik Indonesia Dalam Penegakan Hukum Pidana," *Lex Librum: Jurnal Ilmu Hukum* 4, no. 2 (2023), <http://dx.doi.org/10.46839/ljih.v4i2.809>.

<sup>24</sup> Rida Ista Sitepu and Yusona Piadi, "Implementasi Restoratif Justice Dalam Pemidanaan Pelaku Tindak Pidana Korupsi," *Jurnal Rechten: Riset Hukum Dan Hak Asasi Manusia* 1, no. 1 (2019): 67–75, <https://doi.org/10.52005/rechten.v1i1.7>.

<sup>25</sup> Sahata Manalu, "Analisis Yuridis Tindakan Diskresi Kepolisian Pada Tahap Penyidikan," *Fiat Iustitia* 1, no. 1 (2020): 109–25, <https://doi.org/10.54367/fiat.v1i1.913>.

<sup>26</sup> Nugraha Manuella Meliala and Muhammad Arif Sahlepi, "Penerapan Restorative Justice Oleh Pengadilan Negeri Medan Untuk Mewujudkan Kepastian Hukum Dalam Penyelesaian Tindak Pidana," *Jurnal Ilmu Hukum, Humaniora Dan Politik* 4, no. 3 (2024): 459–70, <https://doi.org/10.38035/jihhp.v4i3.1961>.

<sup>27</sup> I Wayan Wisadnya, "Wewenang Pelaksanaan Diskresi Kepolisian Dalam Upaya Penegakan Hukum (Tinjauan Dari Perspektif Yuridis Normatif)," *Jurnal Ilmiah Raad Kertha* 3, no. 2 (2020): 52–70, <https://doi.org/10.47532/jirk.v3i2.219>.

<sup>28</sup> Ahmad Syaufi, *Konstruksi Model Penyelesaian Perkara Pidana Yang Berorientasi Pada Keadilan Restoratif* (Yogyakarta: Samudra Biru (Anggota IKAPI), 2020).

<sup>29</sup> Prima Muliadi, Tengku Erwinsyahbana, and Mhd Teguh Syuhada Lubis, "Pengawasan Kewenangan Diskresi Kepolisian Terhadap Penghentian Penyidikan Tindak Pidana Berdasarkan Keadilan Restoratif Di Kepolisian Daerah Sumatera Utara," *Iuris Studia: Jurnal Kajian Hukum* 5, no. 1 (2024): 58–70, <https://doi.org/10.55357/is.v5i1.493>.

<sup>30</sup> I Komang Seri Pande Wahyu, Ni Putu Rai Yuliantini, and Muhamad Jodi Setianto, "Implementasi Restorative Justice Berdasarkan Diskresi Kepolisian Terhadap Tindak Pidana Kecelakaan Lalu Lintas Di Polres Karangasem," *Jurnal*

This cannot be separated from the Investigator's assessment of the relatively light losses from criminal acts so that they are considered less effective and efficient if the legal process is carried out according to existing regulations and the desire of the reporter to stop the case process based on a peace agreement and recovery of the victim.<sup>31</sup>

Investigators can certainly ignore their discretionary authority by rigidly implementing the rules, but this can have an impact on government stagnation in the field of law enforcement.<sup>32</sup> In order to respond to legal needs in society and fulfill the sense of justice of all parties, the Police as the institution given law enforcement authority is reformulating the criminal law enforcement system by accommodating the values of restorative justice as stated in the Republic of Indonesia Police Regulation (Perpol) Number 8 of 2021 concerning Handling Criminal Acts based on Restorative Justice.<sup>33</sup> In this regulation, the Police are given the authority to facilitate the wishes and good intentions of the parties in repairing relationships affected by criminal acts in a familial manner in order to create order in society.<sup>34</sup>

Handling cases based on restorative justice in the Police is a development of discretionary authority in accordance with Article 16 and Article 18 of the Police Law. This considers the need for the Police to realize the resolution of criminal acts by prioritizing restorative justice which emphasizes returning them to their original state and balancing the protection and interests of victims and perpetrators who are not punishment oriented. Due to these considerations, the Republic of Indonesia Police Regulation (Perpol) Number 8 of 2021 concerning Handling of Criminal Acts based on Restorative Justice was created.<sup>35</sup>

In Police Regulation no. 8 of 2021, the Police have the authority to facilitate the wishes and good intentions of the parties in repairing relationships affected by criminal acts on a familial basis by fulfilling general requirements for carrying out criminal investigation functions, investigations or investigations and fulfilling special conditions for investigation or investigation activities.<sup>36</sup> The general requirements referred to include material requirements, namely not causing unrest/rejection from the community, not having the impact of social conflict, not having the potential to divide the nation, not being radicalism

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*Media Komunikasi Pendidikan Pancasila Dan Kewarganegaraan* 4, no. 1 (2022): 110–22, <https://doi.org/10.23887/jmpppk.v4i1>.

<sup>31</sup> Chandra Aulia Putra, Madiasa Ablisar, and Mahmud Mulyadi, "A Restorative Justice Approach to The Settlement of The Persecution Crime At Police Central Barumun," *Mahadi: Indonesia Journal of Law* 2, no. 1 (2023): 71–86, <https://doi.org/10.32734/mah.v2i1.11272>.

<sup>32</sup> Udin Latif, "Diskresi Penyidik Kepolisian Dalam Penyelesaian Perkara Pidana Melalui Jalur Non Litigasi," *Muadalah: Jurnal Hukum* 3, no. 1 (2023): 14–27, <https://doi.org/10.47945/muadalah.v3i1.967>.

<sup>33</sup> Laksamana Bagas Dewandaru, Jawade Hafidz, and Latifah Hanim, "The Policy of the Prosecutor's Authority in Termination of Prosecutions Based on Restorative Justice in Criminal Justice System In Indonesia," *Law Development Journal* 4, no. 3 (2022): 403, <https://doi.org/10.30659/ldj.4.3.403-415>.

<sup>34</sup> Andy Pradana Fendiarmo, "The Role of the Police in Handling Criminal Cases Through Restorative Justice After the Ratification of Law Number 1 of 2023 Concerning the Criminal Code," *Ratio Legis Journal* 2, no. 1 (2023): 476–89, <http://dx.doi.org/10.30659/rlj.2.1.%25p>.

<sup>35</sup> Adhi Putranto Utomo, "Penerapan Keadilan Restoratif Sebagai Bentuk Diskresi Kepolisian Terhadap Tindak Pidana Penganiayaan Di Polres Pasuruan," *Sivis Pacem* 1, no. 2 (2023), p. 148-149.

<sup>36</sup> Adhi Putranto Utomo, "Penerapan Keadilan Restoratif Sebagai Bentuk Diskresi Kepolisian Terhadap Tindak Pidana Penganiayaan Di Polres Pasuruan," *Sivis Pacem* 1, no. 2 (2023), p. 148-149.



and separatism, not repeating criminal acts based on court decisions, not criminal acts of terrorism, not criminal acts against security. state, criminal acts of corruption and criminal acts against people's lives. Then what is meant by formal requirements is that there is peace from both parties as evidenced by a peace agreement letter signed by the parties and the perpetrator is responsible and fulfills the victim's rights in the form of returning goods, compensation for losses suffered by the victim, compensation for costs incurred because of the criminal act.

A request to resolve the case using Restorative Justice must be submitted by the Parties and then addressed to the head of the police institution where the case is being handled. The police leaders in question are the Head of Police for the Polsek and Polres levels, the Kapolda for the Polda level and the Head of Criminal Investigation at the Police Headquarters level. If the leadership approves the request, a Special Case Title will be held. Special case title is one of the case title mechanisms carried out by the Police, if referring to Perkap No. 6 of 2019 concerning Criminal Investigations, the case title is "The activity of providing an explanation of the inquiry and investigation process by the investigator to the degree participants and followed by a group discussion to obtain responses/input/corrections in order to produce recommendations to determine follow-up to the investigation and investigation process".<sup>37</sup>

Furthermore, the results of the Special Case Title are used as the basis for an assessment by the Investigator whether the requirements for case handling based on restorative justice have been fulfilled so that an SP3 can be issued, or the case can be continued to the next level, namely further investigation, inquiry, or submission to the prosecutor's office. Supervision of the termination of investigations or investigations based on restorative justice is carried out by the Investigation Supervision Bureau of the National Police Criminal Investigation Agency at the National Police Headquarters level, the Supervision Section at the Regional Police level, and the Criminal Investigation Unit Head at the Resort Police and Sector Police levels.

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<sup>37</sup> Fitriana Sidikah Rachman and Putri Jasmin Zahira, "Tinjauan Diskresi Kepolisian Dalam Penerapan Restorative Justice (Keadilan Restoratif) Pada Penanganan Tindak Pidana Berdasarkan Perpol Nomor 8 Tahun 2021," *Causa: Jurnal Hukum Dan Kewarganegaraan* 2, no. 8 (2024): 75–90, <https://doi.org/10.3783/causa.v2i8.2442>.

<sup>38</sup> Annemieke Wolthuis et al., "Dutch Developments: Restorative Justice in Legislation and in Practice," *Int'l J. Restorative Just.* 2 (2019): 128-131. <https://doi.org/10.5553/IJRJ/2589089120/19002001007>.

of restorative justice through mediation between victims and perpetrators, known as victim offender mediation (VOM), as a standard service for criminal cases at all stages of the legal process and for various types of criminal offenses.<sup>39</sup> Furthermore, Article 51H regulates that agreements between the perpetrator and the victim must be considered by the judge when imposing sanctions. The mediation efforts carried out by the litigants will give rise to a discussion regarding compensation. The Dutch institution responsible for paying compensation to victims is The Central Judicial Collection Agency (*Centraal Justitiele Incassobureau-CJIB*), an agency under the auspices of the Ministry of Justice. The main task of the CJIB is to manage the collection of fines for various government agencies. The agency collects various types of fines, including traffic fines, compensation to victims, confiscation payments, fines from court decisions or decisions of the Public Prosecutor, as well as administrative fines for other authorities. The implementation of restorative justice in the Netherlands is more structured and coordination is much smoother considering that the institutions related to the criminal justice system, namely the courts, prosecutors, police and immigration are all within the organization and structure of the Ministry of Justice. This is different from Indonesia which has a functional differentiation system.<sup>40</sup>

### **3.2 The Police's Authority to Terminate Cases Based On Restorative Justice**

In implementing the authority to terminate inquiries and investigations by the Police, it is necessary to review the nature of the discretionary authority possessed by the Police. If we look at the theory of the nature of authority (as stated in subsection a), the nature of police authority can be bound or free/discretionary. Bound authority is the authority of a government official or body that must be implemented or cannot do anything other than what is stated in the contents of a regulation. This authority has its contents determined in detail, when and under what circumstances this authority can be used. Meanwhile, discretionary authority (*beleidsvrijheid, discretionary power, freies ermessen*) is the authority given along with the freedom of officials to regulate in more concrete and detailed terms, while statutory regulations only provide basic matters.<sup>41</sup> Based on the explanation regarding the character of the authority, the SP3 is a binding authority because the authority to issue an SP3 is an obligation that must be carried out by the Investigator if he encounters the conditions referred to in the provisions of Article 109 (2) of the Criminal Procedure Code. Furthermore, the conditions in question have been determined in a limitative manner, namely First, Sufficient evidence is not obtained, namely if the investigator does not obtain sufficient evidence to prosecute the suspect or the evidence obtained by the investigator is insufficient to prove the suspect's guilt. Second, the alleged incident is not a criminal act.

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<sup>39</sup> Ahmad Jamaludin and Dandi Ditia Saputra, "Unifikasi Regulasi Keadilan Restoratif Melalui Sistem Peradilan Pidana Indonesia," *Legal Standing: Jurnal Ilmu Hukum* 7, no. 2 (2023): 417–35. <https://doi.org/10.24269/lis.v7i2.7315>.

<sup>40</sup> the principle of functional differentiation, which means that each law enforcement officer in the criminal justice system has its own duties and functions that are separate from one another, see Didik Endro Purwoleksono, "Hukum Acara Pidana" (Airlangga University Press, 2015).

<sup>41</sup> Philipus M. Hadjon, *Basic Understandings of Governmental Actions*, Djumali Surabaya, 1985, p. 12–13 see also Agustina Wati, Bayu Prasetyo and Siti Kotijah, *Introduction to Government Discretionary Power*, RV Pustaka Horizon: Samarinda, 2019, p. 1-3.

Third, stopping the investigation by law. This reason can be used if there are reasons for the abolition of the right to sue and the loss of the right to carry out a crime, namely because the suspect died *nebis in idem*, or because the criminal case has expired.

If it is related to the reasons used by investigators in issuing SP3 for criminal acts based on restorative justice, the National Police Investigators do not have the constitutive meaning of terminating cases based on restorative justice, because the legal construction of terminating investigations is limited and integrated in accordance with the provisions of Article 109 (2) of the Criminal Procedure Code.<sup>42</sup> Apart from these reasons, the investigator cannot terminate the case because based on the principle of legality in the Criminal Procedure Law, the Public Works Prosecutor must prosecute every criminal case brought before him according to the law. Based on this principle, the culmination of every investigation is whether a prosecution based on the law may be carried out before the trial so that handing over the case to the Public Works Prosecutor is an obligation if the files and evidence are complete.<sup>43</sup>

In practice, handling cases based on restorative justice at the investigation stage has a positive impact on accelerating recovery for victims where victims can hold perpetrators accountable directly without going through a court decision. This can reduce the burden of case buildup in the criminal justice system. However, the implementation of case handling based on restorative justice at the investigation stage still has weaknesses, including the lack of a check and balance mechanism for investigators in issuing SP3, which has the potential for abuse of authority in handling cases.<sup>44</sup> For example, in the case of the rape of ND (the victim) by four of the victim's colleagues, SP3 was issued by Bogor Police investigators on the grounds that the victim's recovery had been fulfilled by marrying the victim to one of the perpetrators, in fact the perpetrator did not carry out his obligations as a husband and even filed for divorce from ND.<sup>45</sup> In this case, the marriage between the perpetrator and the victim was only used as a condition for the legal process at the Bogor Police to be stopped.<sup>46</sup> From the data describing the implementation of restorative justice, it is necessary to optimize the implementation of restorative justice by strengthening regulations, including clarifying the definition of restorative justice in case handling in order to equalize the perception of law enforcement officials that restorative justice is not narrowly defined as a method of peacefully terminating cases, which in police terms is often called with 86 (eight

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<sup>42</sup> Louisa Yesami Krisnalita and Dinda Wigrhalia, "Penghentian Penyidikan Terhadap Delik Biasa Atau Laporan Berdasarkan Teori Hukum Progresif," *Binamulia Hukum* 9, no. 2 (2020): 93–106, <https://doi.org/10.37893/jbh.v9i2.365>.

<sup>43</sup> Purwoleksono, "Hukum Acara Pidana." Surabaya: Airlangga University Press, 2015, p. 45.

<sup>44</sup> Ady Thea, LBH Makassar Beberkan Tantangan Penerapan Restorative Justice, 2023 accessed from <https://www.hukumonline.com/berita/a/lbh-makassar-beberkan-tantangan-penerapan-restorative-justice-lt646455fc68367/?page=1>

<sup>45</sup> Dian Nita, Kronologi Pegawai Kemenkop UKM Diperkosa 4 Rekan Kerja, Kini Keluarga Tuntut Keadilan, 2022 accessed from <https://www.kompas.tv/nasional/341451/kronologi-pegawai-kemenkop-ukm-diperkosa-4-rekan-kerja-kini-keluarga-tuntut-keadilan>

<sup>46</sup> Singgih Wiryono and Bagus Prasetyo, LPSK: Korban Perkosaan Pegawai Kemenkop UKM Masih Alami Trauma, 2022 accessed from [https://nasional.kompas.com/read/2022/12/01/20171031/lpsk-korban-perkosaan-pegawai-kemenkop-ukm-masih-alami-trauma?debug=1&lgm\\_method=google&google\\_btn=onetap](https://nasional.kompas.com/read/2022/12/01/20171031/lpsk-korban-perkosaan-pegawai-kemenkop-ukm-masih-alami-trauma?debug=1&lgm_method=google&google_btn=onetap)

six), but criminal handlers who emphasize the recovery of victims through active involvement of victims, perpetrators, local communities, the position of investigators/investigators in handling cases as neutral mediators and the strengthening of monitoring mechanisms in the issuance of SP3 by Investigators.<sup>47</sup>

#### 4. CONCLUSION

The implementation of restorative justice in the Police is part of the attribution authority granted by the Police Law to carry out "discretionary authority" which seeks to regulate technical matters of handling cases oriented towards restoring the original situation by involving the perpetrator, victim, victim's family, perpetrator's family and impartial third parties. The issuance of legal products after handling cases based on restorative justice by investigators in the form of SP3 does not yet have a strong foundation because the criteria for terminating cases in Article 109 (2) of the Criminal Procedure Code are limited. Currently investigators are issuing SP3 referring to the expansion of the meaning of police discretion in Police Regulation No.8 of 2021. The author's suggestion is that it is necessary to strengthen internal police regulations, one of which regulates the definition of restorative justice in handling, clarity on the position of investigators in handling cases and strengthening monitoring mechanisms. Termination of the case carried out by the Investigator.

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<sup>47</sup> Kahardani Kahardani et al., "Penerapan Restorative Justice Dalam Penyelesaian Perkara Pidana Oleh Kepolisian Republik Indonesia (POLRI)," *Law and Humanity* 1, no. 1 (2023): 79, <https://doi.org/10.37504/lh.v1i1.520>.

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