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

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Abstract

Tujuan penelitian ini untuk mengkaji kewenangan Polri dalam penanganan perkara berbasis keadilan restoratif dan kewenangan Polri dalam penghentian perkara berdasarkan keadilan restoratif. Pengaturan penerapan keadilan restoratif bagi pelaku dewasa di Indonesia memiliki standar, syarat dan produk hukum yang dikeluarkan berbeda antar lembaga penegak hukum dalam sistem peradilan pidana. Penelitian ini penting dilakukan untuk memperkuat kebijakan penanganan perkara pidana berbasis keadilan restoratif oleh Polri. Penelitian ini merupakan penelitian normatif yang dilakukan dengan menganalisis norma dalam peraturan perundang-undangan maupun konsep terkait keadilan restoratif. Perbedaan penelitian ini dengan penelitian sebelumnya yaitu fokus mengkaji kewenangan diskresi Polri dalam penanganan perkara berdasarkan keadilan restoratif serta legalitas produk hukum yang dikeluarkan Polri pasca penerapan keadilan restoratif. Simpulan bahwa pelaksanaan keadilan restoratif di Kepolisian merupakan bagian dari kewenangan diskresi Kepolisian apabila keadilan restoratif dimaknai sebagai teknis penanganan perkara dengan pendekatan yang lebih mengutamakan pemulihan dengan melibatkan pelaku, korban, keluarga korban, keluarga pelaku dan pihak ketiga yang imparisial. Adapun diterbitkannya SP3 berdasarkan keadilan restoratif merupakan perluasan pemaknaan terhadap kewenangan diskresi Kepolisian dikarenakan alasan SP3 sudah terintegrasi secara limitatif dalam Pasal 109 (2) KUHP.

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This research aims to investigate the authority of the National Police in managing cases based on restorative justice and in 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 into 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.¹ The criminal justice system is structured by a sub-sub system which includes the police sub-system with the authority to investigate and investigate, the prosecutor's sub-system with the authority to prosecute, the court sub-system with the authority to

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

examine, try and decide cases, and the correctional sub-system as the executor of punishment.² 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.³

According to Muladi, the Indonesian criminal justice system is most appropriate to adopt a balance model with reference to *daad-dader strafrecht*, namely a model that takes into account protection for all elements, in particular the balance of protection of the interests of the perpetrator and the interests of the victim.⁴ One concept related to the balance model is restorative justice. By adopting the restorative justice approach, it is anticipated that the perpetrator can compensate for the losses and suffering endured by the victim and their family. Additionally, the perpetrator's sense of guilt can be alleviated through receiving 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.⁵ 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.

Restorative justice has had a significant impact on Indonesia's approach to punishing adult criminals. This is because the resolution of criminal cases through the criminal justice system which results in a court verdict is considered not to have provided justice to the victim and has an impact on the backlog of cases in law enforcement agencies and overcapacity in correctional institutions so that the legal objectives to be achieved with criminal sanctions are not optimal.

The implementation of restorative justice for adult offenders in Indonesia does not yet have strong regulations, which have only been regulated in the internal rules of law enforcement agencies. Different arrangements for handling cases based on restorative justice have implications for different standards and requirements between law

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

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

⁴ Ni Ketut Sari Adnyani, "Kewenangan Diskresi Kepolisian Republik Indonesia Dalam Penegakan Hukum Pidana," *Jurnal Ilmiah Ilmu Sosial* 7, no. 2 (2021): 135–44, <https://doi.org/https://doi.org/10.23887/jiis.v7i2.37389>.

⁵ 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>.

enforcement agencies. Apart from that, there is no common concept of punishment for perpetrators, namely that the police interpret restorative justice in the form of terminating the case by issuing an Order to Stop Investigation.⁶ This is different from the court which interprets that peace between the victim and the perpetrator is considered by the Panel of Judges as a basis for mitigating the punishment of the perpetrator. Each law enforcement agency uses discretionary authority in carrying out or exercising rights in resolving cases using a restorative justice approach.

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 Perpol number 8 of 2021.⁷ The strength of this research is that it explains the decision-making process by the Bandung City Police Leaders in assess 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.⁸ The explanation provided by this study of the police's discretionary right to use criminal mediation for small crimes to carry out restorative justice is its strength. The flaw is that the legitimacy of the legal goods that the police issue in managing minor criminal cases using restorative justice has not been investigated by researchers. 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.⁹ 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 Perpol 8 of 2021. The strengths in this research explain the legal consequences of discretion exercised by investigators as well as the practice of applying discretion to the process of handling criminal cases carried out by investigators at the Sleman Police.

In order 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

⁶ 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/https://doi.org/10.20961/hpe.v10i2.64717>.

⁷ 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/https://doi.org/10.3783/causa.v2i8.2442>.

⁸ Budi Heriyanto, "Alternatif Penyelesaian Perkara Pidana Menggunakan Mediasi Penal Dalam Diskursus Diskresi Kepolisian," *Transparansi Hukum* 5, no. 2 (2022): 36–48, <https://doi.org/https://doi.org/10.30737/transparansi.v5i2.3055>.

⁹ Alfano Ramadhan, "Diskresi Penyidik Polri Sebagai Alternatif Penanganan Perkara Pidana," *Lex Renaissance* 6, no. 1 (2021): 25–41, <https://doi.org/https://doi.org/10.20885/JLR.vol6.iss1.art3>.

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.

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.¹⁰

The problem approach in legal research employs two approaches: the statutory approach and the conceptual approach.¹¹ 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, opinions of legal experts, governments, and legislative institutions to determine the concept of criminalization/decriminalization of activities in legislation.¹² Legal materials are collected and analyzed in accordance with the legal issues highlighted.¹³ Then, a conclusion is reached by delivering a prescription.

3. RESULTS AND DISCUSSION

3.1 Authority theory

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.¹⁴ This authority can be obtained through attribution, delegation, or mandate.¹⁵

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

¹⁰ 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>.

¹¹ 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/https://doi.org/10.51749/jphi.v2i1.14>.

¹² 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/https://doi.org/10.14710/gk.2020.7504>.

¹³ Tunggal 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/https://doi.org/10.22219/aclj.v4i1.24855>.

¹⁴ 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/https://doi.org/10.21143/jhp.vol51.no1.3012>.

¹⁵ Danel Aditia Situngkir, "Mengenal Teori Demokrasi Dan Teori Kewenangan Dalam Ilmu Hukum," *Ensiklopedia of Journal* 5, no. 4 (2023): 8–14, <https://doi.org/https://doi.org/10.33559/eoj.v5i4.1745>.

attribution authority. The authority for attribution can only be changed and expanded by making changes to the Constitution or Law.¹⁶ Then delegation authority is 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.¹⁷ Furthermore, authority based on a mandate is the authority 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).¹⁸

According to Jimly Asshiddiqie based on the hierarchy of sources of authority and the quality of functions in the state power system, state institutions in Indonesia consist of three organs; the first-tier organs can be called high state institutions, namely the president and vice president, DPR, DPD, MPR, MK, MA and BPK. All of these institutions receive authority from the 1945 Constitution. Then, The second-tier organs are referred to as state institutions only, namely State Ministers, TNI, Polri, KY, KPU and BI. Some of these institutions get their authority from the Constitution, and some get their authority from the Law. Lastly, the third-tier organs are state institutions whose source of authority comes from regulators or rule makers under the law. For example, the National Law Commission and the National Ombudsman Commission.

The National Police is a governmental organization established under Article 30, paragraph (4) of the Constitution. The responsibilities and powers of this agency are additionally governed by Law Number 2 of 2002, which pertains to the State Police of the Republic of Indonesia.¹⁹ Hence, the Police, being a key element of law enforcement with delegated authority, is responsible for enforcing criminal justice laws as outlined in the Criminal Code, Criminal Procedure Code, and other relevant criminal legislation.²⁰

3.2 Police Authority in Law Enforcement

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.

¹⁶ Moh Gandara, "Kewenangan Atribusi, Delegasi, Dan Mandat," *Khazanah Hukum* 2, no. 3 (2020): 92–99, <https://doi.org/10.15575/kh.v2i3.8167>.

¹⁷ Momos Endrico and Tjempaka Tjempaka, "Analysis of the Validity of Authentic Deeds and Legal Responsibility of Notaries in Land Mafia Cases," *Edunty Kajian Ilmu Sosial Dan Pendidikan* 2, no. 8 (2023): 879–94, <https://doi.org/https://doi.org/10.57096/edunty.v2i8.117>.

¹⁸ 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/https://doi.org/10.99075/ijevss.v3i01.647>.

¹⁹ Faiz Emery Muhammad and Beniharmoni Harefa, "Pengaturan Tindak Pidana Bagi Pelaku Penipuan Phising Berbasis Web," *Jurnal USM Law Review* 6, no. 1 (2023): 226, <https://doi.org/10.26623/julr.v6i1.6649>.

²⁰ Djuhandhani Rahadjo Puro, Kukuh Sudarmanto, and Zaenal Arifin, "Optimalisasi Pelaksanaan Pidana Mati Dalam Mewujudkan Efek Jera Pada Tindak Pidana Pembunuhan Berencana," *Jurnal USM Law Review* 6, no. 3 (2023): 1181, <https://doi.org/10.26623/julr.v6i3.7945>.

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, 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 fulfil 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.²¹

During the investigation phase, the Police create a Notice of Commencement of Investigation (SPDP) and send it to the Prosecutor's Office. The Head of Criminal Investigation then assigns a prosecutor to examine the case files and determine if they are considered complete (P-21). If they are complete, the files are sent to the Court. If not, they

²¹ 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>.

are returned to the Investigator to be finished.²² At the implementation level, it often happens that a case is stopped by investigators because it meets the requirements as required by Article 109 paragraph (2) of the Criminal Procedure Code, which results in the case having to be stopped and not proceeding to court by issuing an Investigation Termination Order (SP3). This article provides limited regulations regarding the grounds for terminating an investigation. Specifically, termination may occur if the investigator fails to gather enough evidence to prosecute the suspect or if the evidence obtained is insufficient to establish the suspect's guilt. Additionally, termination may be warranted if the alleged incident does not constitute a criminal act, as determined by law. In addition the investigation has been stopped for the sake of law, that mean 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.

The consequence of stopping the investigation process is that the investigator must provide a sign that has a legitimizing function of stopping the investigation. The legal product used by the Police is that if the examination of a criminal case is stopped at the investigation stage, then an Investigation Termination Order (SP3) is issued by the Investigator.²³

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.²⁴ 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.

The authority to exercise discretion by the Police is based on considerations of their need to carry out their duties (*Flichtassiges Ermessen*).²⁵ This is necessary because the

²² Flora Saida Henny et al., "Keadilan Restoratif Dalam Melindungi Hak Korban Tindak Pidana Cyber: Manifestasidan Implementasi," *Jurnal Ius Constituendum* 8, no. 2 (2023): 169–84, <https://doi.org/http://dx.doi.org/10.26623/jic.v8i2.6365>.

²³ Azizul Hakiki, "Surat Perintah Penghentian Penyidikan (SP3) Yang Diterbitkan Berdasarkan Perdamaian Antara Tersangka Dan Pelapor Dalam Delik Biasa," *Wacana Paramarta Jurnal Ilmu Hukum* 21, no. 1 (2022): 25–34, <https://doi.org/10.32816/paramarta.v21i1.147>.

²⁴ Edi Saputra Hasibuan and M H SH, *Hukum Kepolisian Dan Criminal Policy Dalam Penegakan Hukum* (Depok: PT. RajaGrafindo Persada-Rajawali Pers, 2021).

²⁵ Derry Angling Kesuma, "Kewenangan Diskresi Kepolisian Republik Indonesia Dalam Penegakan Hukum Pidana," *Lex Librum: Jurnal Ilmu Hukum* 4, no. 2 (2023), <https://doi.org/http://dx.doi.org/10.46839/ljih.v4i2.809>.

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.²⁶ 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.²⁷ 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.²⁸ 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.²⁹

3.3 The Jurisdiction of the Police in Cases Involving Restorative Justice

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 unfavorable events from occurring. disillusionment with civilization³⁰ Apart from that, social engineering and legislative development can also be examples of police discretion in addressing cases based on restorative justice.³¹

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

²⁶ 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>.

²⁷ Sahata Manalu, "Analisis Yuridis Tindakan Diskresi Kepolisian Pada Tahap Penyidikan," *Fiat Iustitia* 1, no. 1 (2020): 109–25, <https://doi.org/https://doi.org/10.54367/fiat.v1i1.913>.

²⁸ 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/https://doi.org/10.38035/jihhp.v4i3.1961>.

²⁹ 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/https://doi.org/10.47532/jirk.v3i2.219>.

³⁰ Ahmad Syaafi, *Konstruksi Model Penyelesaian Perkara Pidana Yang Berorientasi Pada Keadilan Restoratif* (Yogyakarta: Samudra Biru (Anggota IKAPI), 2020).

³¹ 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," *Juris Studia: Jurnal Kajian Hukum* 5, no. 1 (2024): 58–70, <https://doi.org/https://doi.org/10.55357/is.v5i1.493>.

benefits in the form of restorative, especially the recovery and rehabilitation of victims.³² 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 on the basis of a peace agreement and recovery of the victim.³³

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.³⁴ 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.³⁵ 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.³⁶

In Perpol 8 of 2021, apart from regulating the discretionary authority of the police to prioritize restorative justice in efforts to restore the situation, balance and interests of victims and punishment of perpetrators who are not retaliatory, the Police are also given the authority to issue letters to stop investigation and examination for the sake of law there is a peace agreement and there is fulfillment of the victim's rights by perpetrator. The action to terminate the case is an official decision obtained collectively (as the final result of the special case title process). This means that the decision to terminate investigations and investigations based on restorative justice is an official decision from the investigator (or police agency) with individual-concrete "Pro Justitia" instructions.

3.4 The Police's Authority to Terminate Cases Based On Restorative Justice

Prior to implementing the authority to terminate cases, the National Police's authority must be evaluated in terms of its nature. Philipus M. Hadjon posits that a differentiation can be made between discretionary authority and bound authority. Bound authority refers to the jurisdiction of a governmental entity or official whose actions are strictly regulated

³² 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 Media Komunikasi Pendidikan Pancasila Dan Kewarganegaraan* 4, no. 1 (2022): 110–22, <https://doi.org/https://doi.org/10.23887/jmppkn.v4i1>.

³³ 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/https://doi.org/10.32734/mah.v2i1.11272>.

³⁴ 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/https://doi.org/10.47945/muadalah.v3i1.967>.

³⁵ 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>.

³⁶ 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, <https://doi.org/http://dx.doi.org/10.30659/rlj.2.1.%25p>.

and cannot deviate from their specifications. The contents of this authority are ascertainably determined, as are the conditions and circumstances under which it may be employed. 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.³⁷

Legal construction means that the National Police Investigators lack the constitutive meaning of reasons for the purpose of law if it relates to the reasons investigators use to issue SP3 for criminal conduct based on restorative justice. Investigations are terminated selectively and merged in compliance with the Criminal Procedure Code and other legislative rule.³⁸ The police's discretionary jurisdiction is expanded upon when investigators decide to close criminal cases based on restorative justice. The termination of criminal cases by investigators based on restorative justice is an expansion of the discretionary authority possessed by the Police.

Justice and peace are inherently interconnected. Oppression arises when there is peace without justice, and a new type of persecution or pressure emerges when there is justice without peace.³⁹ It is important to emphasize that law enforcement officials should not narrowly interpret restorative justice as solely an attempt to achieve peace or resolve cases through formal judicial mechanisms or mechanisms outside of court. The resolution of criminal cases using the principles of restorative justice should not be understood as a means of peacefully ending cases, commonly known as "86" in police jargon, but rather as a comprehensive approach to achieving justice for all parties involved in criminal cases through appropriate measures. Engaging victims, perpetrators, the local community, and investigators as impartial mediators to actively establish a secure and harmonious environment for public safety and order.⁴⁰

4. CONCLUSION

Restorative justice is implemented in the Police Department as part of the attribution authority granted by the Police Law to exercise "discretionary authority," which seeks to regulate technical matters for handling cases that prioritize recovery by involving the perpetrator, victim, victim's family, perpetrator's family, and impartial third parties. Meanwhile, given the limited integration of the foundation for SP3 in Article 109 (2) of the Criminal Procedure Code, the police's discretionary authority is expanded when investigators terminate criminal proceedings based on restorative justice.

³⁷ Agustina Wati, Bayu Prasetyo, and Siti Kotijah, *Pengantar Kekuasaan Diskresi Pemerintahan*, *Pustaka Horizon* (Yogyakarta: Lingkar Media, 2019), p 1-3.

³⁸ 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/https://doi.org/10.37893/jbh.v9i2.365>.

³⁹ Bayu Adi Rachmat and Bambang Waluyo, "Juridical Analysis of Fundamental Considerations of The Judge on Defendant's Attitude at The Trial," *Jurnal USM Law Review* 6, no. 3 (2023): 900, <https://doi.org/10.26623/julr.v6i3.7313>.

⁴⁰ Kahardani Kahardani et al., "Penerapan Restorative Justice Dalam Penyelesaian Perkara Pidana Oleh Kepolisian Republik Indonesia (POLRI)," *Law and Humanity* 1, no. 1 (2023): 65–84, <https://doi.org/https://doi.org/10.37504/lh.v1i1.520>.

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