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The Relationship Between Restorative Justice Approach and the Authority of State Officials

Isakh B. Manubulu[1], Randy V. Neonbeni [2], Kundrat Mantolas[3], Glen Daniel Febrian Ongkio Buol[4]

[1] Cendana Wangi College of Law, E-mail: isakhbenyaminmanubulu@gmail.com
[2] Cendana Wangi College of Law , E-mail: randyneonbeni@gmail.com
[3] Indonesian Public Prosecution Service, E-mail : lapendosto@gmail.com
[4]Bina Damai Utama Legal Aid Foundation, E-mail : buoldaniel13@gmail.com

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Corresponding Author:
Isakh B. Manubulu, E-mail: isakhbenyaminmanubulu@gmail.com

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Abstract
The adoption of the restorative justice approach for case resolution brings signifies a transformative in Indonesia's criminal justice system. The discretion of state officials plays a pivotal role in determining the feasibility of restorative justice approach. This paper formulated in two issues: the relationship between restorative justice approach and the authority of state officials, as well as the boundaries of their jurisdiction in determining restorative justice approach. Formulated with normative legal research methods and support by conceptual, analytical, and legislative approach. It concludes that the relationship between restorative jutice approach and the authority of state officials hinges on their discretionary interpretation of the suitability of utilizing the restorative justice approach for case resolution. Furthermore, the constraints on their discretionary authority are predominantly laid out in Law Number 30/2014 and in institutional regulations such as PERKAP 8/21 for police officials, PERJARI 15/20 for officials in the prosecutor's office, and judicial decisions like PERMA 1/2016 Jo. KMA Decision No. 108/KMA/SK/VI/2016.

I. Introduction

The theoretical framework behind restorative justice is based on the principle of ultimum remedium introduced by Moddeman with the term "*het laatste redmiddel*." Moddeman is also known for his work in rebuilding the value of the death penalty in Germany and respecting human rights. Moddeman's understanding of the Ultimum Remedium Principle (URP) was obtained from his career as a lawyer and politician. [1] This method aims to reduce interference from the parliament in the judicial process unless it is

[1] The concept of '*Het laatste redmiddel*' was used to respond to Parliament's inquiry about the Dutch Criminal Code. In Oleg's study of the various forms of criminal responsibility in the legal system of Lithuania, he explained that criminal law is considered to be '*ultima ratio*' or the last resort. Fedosiuk, O. (2012). *Criminal Liability as a Last Resort (Ultima Ratio): Theory and Reality*. *Jurisprudencija*, *19*(2), Article 2.

necessary in urgent circumstances[2] concerning "*rechts gutter*".[3] URP has influenced 157 special policies related to criminal law in Indonesia, most of which are categorized as economic crimes under "*Economy Criminal Law*." The assumption about the effectiveness of URP in resolving economic crimes was then integrated into general criminal policy on absolute crimes[4] and several types of relative crimes under Restorative Justice (RJ). According to Prains, RJ is a '*process value*' where everyone involved in criminal procedures collaborates to solve problems and find solutions.

The rejection from Kathleen Daly's about Restorative Justice (RJ) is based on its perceived lack of reflection of retributive justice, in accordance with Antony Duff's idea that individual accountability through punishment is essential for achieving justice. The instrumental value of RG in delivering justice continues to be a topic of debate, but it has undeniably become a significant reference point for addressing a wide range of issues, both within and outside the realm of the legal system.[5]

Restorative justice, according to Gerry Johnstone and Daniel Van Ness in the Handbook of Restorative Justice, involves six basic components. These components include (1) Several informal processes involving victims; (2) Emphasis on empowering people affected by a crime or wrongful punishment; (3) Decision makers focusing on understanding the perpetrator's mistake and taking responsibility; (4) Facilitators ensuring that decisions align with community values. (5) Facilitators determining the form and method of providing compensation for victims' recovery; (6) Promoting the strengthening and repairing of relationships between individuals to resolve difficult situations.[6]

The broad concept of RG leads to the idea of RG's position as an open concept. Although the goal of RG is to solve a problem, it lacks a conceptual framework for the limits of intervention. This can lead facilitators in the stage decision-making to become trapped in the concept of intervention because they do not fully practice the values of RG. Ubleeuw and Mulyanto highlight the differences in RG perspectives between the police and the

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[2] Yoserwan, Danil, E., Warman, K., & Yulfasni. (2019). *The Implementation of Ultimum Remedium Principle in Economic Criminal Law of Indonesia. Journal of Legal, Ethical and Regulatory Issues*, *22*(1).

[3] In Germany, the term "Rechtsgutter" or "gutter margins" refers to the public interest in legal policy, indicating a focus on the broader societal welfare and public good. This concept parallels the criminal law policy in Indonesia, which similarly prioritizes political welfare and the maintenance of social policy for the benefit of the community.. Ramadani, S., Danil, E., Sabri, F., & Zurnetti, A. (2021). *Criminal law politics on regulation of criminal actions in Indonesia. Linguistics and Culture Review*, *5*(1),. https://doi.org/10.21744/lingcure.v5nS1.1651.

[4] Yoserwan *et.al, The Implementation… Op.cit,* h. 1378. Indonesia's approach to criminal law policy is rooted in two fundamental concepts. The first, criminal law policy, encompasses the study of crime, including criminal acts and their prevention. The second concept, non-criminal policy, involves implementing measures to prevent crimes from occurring in the first place.

[5] Duff's perspective on punishment revolves around the concept of it being a necessary process to uphold societal order. This aligns with his communicative theory of punishment, which can also be seen as an educational approach. The emphasis is on educating the offender rather than isolating them from their social environment, with the goal of helping the perpetrator comprehend and learn from their mistakes in Surhayanti, N. (2017). *Progresivitas Dalam Penegakan Hukum Penyalahguna Narkotika. Kertha Patrika*, *39*(2), 133–145. https://doi.org/10.24843/KP.2017.v39.i02.p05.

[6] Johnstone, G., & Ness, D. V. (2013). Handbook of Restorative Justice. Routledge, h.7. explain "*what sort of a concept of restorative justice-an internally compelx concept*" on 6 primary rule.

prosecutor's office.[7] Regarding the comparison, Ubleeuw and Mulyanto noted that the Police utilize the RG approach under PERKAP 8/21, while the Prosecutor's Office adheres to PERJARI 15/20. The implementation of the RG at the police level entails its inclusion in the resolution process of criminal acts, involving the participation of perpetrators, victims, family members, community leaders, religious figures, traditional elders, and other relevant parties.[8,9]

The requirements for the implementation of RG in Article 6 of PERKAP 8/21 include material[10] and formal requirements.[11] RG in the Prosecutor's Office has a broader scope, where it must be based on the principles of justice, public interest, proportionality, and the judicial trilogy.[12] The concept of RG as explained by Ubleeuw and Mulyanto still seems unable to fully explain the value of RG to be established in the two institutions.

The concept of "RG" raises questions about the extent of authority of two institutions in evaluating whether RG determination is appropriate in a case. If there are no clear limits to RG determination, it can impact the idea of legal certainty, originating from the United States Constitution in 1776 and then stated in Article 1, paragraph (1) of the Criminal Code ("KUHP"). Understanding the limitations, Article 7(1), letter J of Law 8/81 grants investigators the authority to carry out other legal actions.[13]

In accordance with this, Article 22 paragraph (2) letters b and c of Law 30/14 states that the discretion granted to State Officials is intended to establish legal certainty and address legal deficiencies. This authority is exclusively granted to government officials '*legal etat*'

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[7] Ubleeuw, A. G. R., & Mulyanto, M. Komparasi Pendekatan Restorative Justice Dalam Penanganan Perkara Pidana Antara Kepolisian Dan Kejaksaan. Jurnal Hukum dan Pembangunan Ekonomi, 10(2), 291-305. Bandingkan dengan Hidayat, S., Adhyakhsa, G., Rifa'i, I. J., & Hermansyah, D. (2024). *Legal Protection for Children Perpetrating the Crime of Theft Based on Restorative Justice*. *Syiar Hukum: Jurnal Ilmu Hukum*, *22*(1), 1-14. DOI. https://doi.org/10.29313/shjih.v22i1.13521.

[8] Lihat Pasal 2 ayat (1) PERKAP 8/21 dimaan RG merupakan ruang lingkup fungsi penyelenggaraan reserse kriminal.

[9] Manubulu, I. B., Tahu, M. F., Astariyani, N. L. G., Da Cruz, R., & Tuasikal, D. F. (2024). Exploring Student Perspectives on Restorative Justice: A Case Study at the Public High School of Kefamenanu. *Indonesian Journal of Advocacy and Legal Services*, *6*(1), 25-52. Doi. https://doi.org/10.15294/ijals.v6i1.78039.

[10] In accordance with Article 6, paragraph (1) of PERKAP 8/21, any action should not lead to social unrest or conflict, potential division of the Republic of Indonesia, association with radicalism, involvement in repeat offenses, or be considered a criminal act of terrorism or against other nations.

[11] In accordance with Article 6, paragraph (2) of PERKAP 8/21, it is mandatory to include a statement expressing the parties' commitment to achieving peace, with the exception of narcotics-related offenses. Furthermore, it is essential to ensure the fulfillment of the rights of the victim and the responsibilities of the perpetrator, excluding cases related to narcotics offenses.

[12] Article 4, paragraph (1) of PERJARI 15/20, Restorative Justice (RG) emphasizes the well-being of the victim and other interests safeguarded by the law. This method is intended to prevent the negative stigma often associated with criminal proceedings, minimize the likelihood of retaliation, and take into account societal responses and values such as obedience, morality, and the public interest.

[13] Manubulu, I. B., Neonbeni, R. V., & Prathama, A. A. G. A. I. (2023). *Dikotomi Pendekatan Keadilan Restoratif Pada Lembaga Kejaksaan dan Kepolisian Republik Indonesia*. *Jurnal Restorative Justice*, *7*(2), 209-230.

[14] to facilitate government intervention, but if it is misused, it may be perceived as an abuse of power. [15]

The widespread abuse of authority by state officials has been examined in multiple journals. This includes the use of undercover purchasing techniques, which are recognized as within the authority of investigators in Article 79 of Law 35/09, but are entirely based on the subjectivity of the investigators. According to the 'Negatief Wettelijk Bewijstheorie', the judge has the prerogative to make decisions outside of the evidence but based on personal beliefs. In several cases, the unclear definition of the form of loss, replaced by a corruptor who only focuses on actual costs, also implies vulnerability to abuse of authority by state officials. On the one hand, Barhamuddin explained that abuse of authority is common in the interpretation of the core crime 'bestanddeel delict', which is closely related to the punishable act 'strafbare hendelingen', in contrast to the element of delict, which does not determine whether a person can be punished or not. [16] However, previous literature has not been able to address the relationship between RG and the authority of state officials in alternative dispute resolution outside the courts, marking the superiority of this writing compared to earlier works.

There is also a few literature explain about restorative justice approach like Sahuri Lasmadi and Elly Sudarty which exposed restorative justice approach on criminal settlement.[17,18] Kasim,*et.al* is also explain about restorative justice approach in edition to resolve village funds corruption in Indonesia demage to state losses below IDR 150 million.[19] Moreover restorative justice regard as a solution to solved significant number of over prison capacity.[20,21] Whereas the authority of to declare a case dismissed with restorative justice approach is owned by state official like the authority of head of attorney general in article 12 (2) PERJA 15/2020. The fact is, there is no previous writings have not been able to answer the question of the relationship between RG and the authority of state officials in alternative dispute resolution, thus marking the superiority of this writing compared to previous writings.

[14] Manubulu, I. B., Utama, I. P. R. S., & Alam, S. M. (2023). *Legislation Performance Approach Through The Formulation of Regional Policy in East Nusa Tenggara*. *Literasi Hukum*, *7*(2), Article 2. http://dx.doi.org/10.31002/lh.v7i2, h. 71. The research on the legislative performance of regional policy-making in NTT Province delves into the concept of "willkeur," highlighting how it stems from the perception of law as a political force.

[15] See Manubulu, *Archetypes… Ibid,* h.2. Some terms used to describe this phenomenon are detournement de pouvoir (French), Verklerend Woordenboek (Dutch) or Willekeur.

[16] Seleky, A., Nirahua, S. E. M., & Corputty, P. (2022). *Kewenangan… Op.cit,* h. 45.

[17] Lasmadi, S., & Sudarti, E. (2021). Restorative Justice as an Alternative for The Settlement of Corruption Crimes That Adverse State Finances in The Perspective of The Purpose of Conviction. *Jurnal IUS Kajian Hukum Dan Keadilan*, *9*(2), 287–298. https://doi.org/10.29303/ius.v9i2.904.

[18] Lasmadi and Sudarty used term of "settlement" to explain the concept of restorative justice while in this journal, restorative justice describe as an legal approach to solved problem.

[19] Kasim, A., Rimi, A. M., & Purnamasari, A. I. (2023). Restorative justice to prevent village fund corruption crimes: A constitutional law and Indonesian criminal law perspective. *International Journal of Criminal Justice Sciences*, *18*(1), 97-112.

[20] Hafizh, R. A., Chairi, A. R., Dirasid, D., Krisnaputra, R. F., & Ali, I. (2021). Effectivity of Restorative Justice Meets The Just Nature of Indonesia Society. *Unram Law Review*, *5*(1).

[21] 'Opportunities and Challenges of Implementing Restorative Justice in the Criminal Justice System in Indonesia', *IJRS* <https://ijrs.or.id/en/publikasi-ijrs/opportunities-and-challenges-of-implementing-restorative-justice-in-the-criminal-justice-system-in-indonesia/> [accessed 7 August 2024].

In their analysis of the RG concept, Gerry Johnstone and Daniel Van Ness highlight the inequality and the significance of certain limitations in achieving legal certainty. This was documented by the Working Committee on Law Enforcement and Regional Government on March 1, 2005, and a report was issued on October 10, 2006, addressing abuses of authority, such as unfair and discriminatory law enforcement and the diversion of civil cases into the criminal justice system. The abuse of authority can be categorized into three objectives: personal or other people's interests, actions not aligned with the authority granted, and actions exceeding the given authority. The article "The Relationship between Restorative Justice and the Authority of State Administrative Officials" aims to explore two main questions: Does a relationship between restorative justice approach and the authority of government officials? What are the boundaries of the government official power in resolving issues through restorative justice approach? These questions seek to clarify the connection between restorative justice and the authority of government official and to delineate the extent of their authority in resolving cases using the RG approach.

2. Research Method

This paper is formulated with normative legal research to explore the empity of norms about the guidelines for implementing RG.[22] The research takes a conceptual, legislative, and analytical approach, using legal tracing techniques and document studies. This article conducted with Ronald Dworkin's ideas of critical realism, Gerald Turkel's about rationality and morality of the rule of law, process value of RG by Prains' and also the interpretation of open concept of RG by Johnstone and Daniel Van Ness'.

3. Result and Analysis

3.1. The Relationship Between Theories of Justice, Restorative Justice Approach, and the Authority of State Officials

The concept of restorative justice places State Administrative Officials ("State official") in a crucial role in law enforcement. This is supported by the open framework of Restorative Justice, which prevents state officials from fully embracing the process value of Restorative Justice. [23] To delve into the position of Restorative Justice as a problem-solving technique that prioritizes two-way justice, we can turn to Ronald Dworking's viewpoint as the basic framework for this discussion. In his reflection, he explained that the primary idea of anti-positivity is integral to both legal reasoning and moral reasoning, where law and morality are inseparable. [24] In essence, law and morality are considered a unity that should be acknowledged as something given. This aspect is based on the premise that legal philosophy, legal theory, and legal doctrine form a triad of fields that are considered given. [25] Dworking sees law as a plural form of morality; he does not view law as an evolving regulation but rather as a means to understand social relationships. [26] The core assumption of anti-positivism actually functions as a rejection of the predominance of positivism in global society, positioning anti-positivism as the antithesis[27] of positivism.

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[22] Diantha, I. M. P. (2016). *Metodologi…Op.cit*. h. 12.
[23] Johnstone & Ness, *Loc.cit*..
[24] Manubulu, I.B. (2023). *506 Tahun Jejak Otonomi di Pulau Rote, Jilid 1. Tersesat dalam Pemahaman Nusak*. Kupang. Tangguh Denara Jaya, h. 31-32.
[25] *Ibid,* h. 28.
[26] *Ibid,* h. 44.
[27] Fios, F. (2014). *Tesis, … Op.cit,* h. 75..

RG essentially discusses justice achieved through a conscious decision-making process that encourages perpetrators of crimes to acknowledge their mistakes and aims to provide restoration and compensation rather than just punishment. This approach is ingrained in Indonesia's criminal justice system under Law 8/81, which is founded on the principles of human rights. In essence, justice is a concept that stems from the legal development of a democratic society, where every individual is regarded as equal in terms of rights, obligations, and the treatment they receive from the law and the government.[28]

RG modifies justice through a series of undefined abstract processes. Even though Johnstone and Ness explain the value elements of RG, deviations from the 6 aspects explained cannot be concluded[29] as a form of injustice, but rather as a technique to achieve mutual benefit.[30] This factor places RG within the circle of legal interpretivism, where institutional practices influence applicable laws.[31] Stravropoulos explains the basic idea of legal interpretivism as being found in institutional practice.[32] Several approaches encourage the practice of interpretivism as a non-moral social fact, including:

(1) Interpretivism as a way to understand rights and obligations;
(2) Interpretivism used to identify several moral principles in the formulation of rights and obligations;
(3) Interpretivism as a form of justification for institutional interpretation or other moral principles that play a role in determining rights and obligations;
(4) Institutional practices giving birth to rights and obligations interpreted from morality, and these rights and obligations are considered to have true moral power.[33]

Institutional practices that give birth to a law based on considerations are also evidence of the relationship between RG and the authority of state officials. In this case, a state official is given discretionary authority to determine a policy not yet regulated by applicable law.[34] The dichotomy of legal discovery carried out by state officials based on their discretionary authority with the aim of filling the legal vacuum 'rechtsvaccum' through the discovery of 'rechtsvinding' law and the creation of 'rechstscepping' law.[35]

The discretion held by the State Administrative Official is not a form of unlimited[36] authority but is limited to moral factors known as "*the morality of the rule of law*".[37] The

[28] See Article 27 ayat (1) UUD 1945.
[29] Underline.
[30] The use of the adjective 'restorative' justice intends to bring about a form of justice that restores things to their original state.
[31] Stavropoulos, N. (2014). *Legal Interpretivism.* Stanford Encyclopedia of Philosophy, h. 1.
[32] *ibid,* h. 2-3. In his writing, Stravropoulos explains that legal interpretivism gives rise to rights and obligations, usually stemming from a political institution or other non-moral social facts. The concept of legal interpretivism is the opposite of legal positivism, which emphasizes certainty in all aspects and limits consideration of legal rights and obligations. Legal interpretivism is a form of natural law and falls outside of positivist approaches.
[33] *Ibid.*
[34] Yusra, D. (2013). *Politik Hukum …Op.cit,* h. 67.
[35] Qamar, D. N., & Anwar, D. A. I., (2023). *Dikotomi Kajian Ilmu Hukum*. Nas Media Pustaka, h.75.
[36] Manubulu *et.al, Legislation Performance Approach, Op.cit,* h. 67.
[37] Manubulu, *506 Tahun*, *Op.cit*, h. 44.

law is not only interpreted based on its enforcement nature but also on the argumentative nature of the law itself.[38] The point being made here is that if the law promotes obedience based solely on position, then the official becomes the law. However, if the law is measured based on its argumentation, then the written law alone does not constitute the law.

This proposition implies that the validity of the decision made by a state official against the effort to implement RG is important. The validity of the decision is expressed in various ways. According to Alf Ross, validity is measured when the law is effectively followed and ratified by the judge as something binding. H.L.A. Hart measures the validity of the law based on its function, legal action, legal impact, and adherence to applicable legal rules. Hans Kelsen explains validity as stemming from the normative nature inherent in a rule. If a state official makes a decision based on discretionary authority, these limitations are a measure of discretion.

The concept of Restorative Justice (RG) aims to promote justice, but it appears to be at odds with Gustav Radbruch's perspective on justice, utility, and legal certainty. According to this concept, justice, utility, and legal certainty are not completely aligned, as they are based on conflicting premises. Justice is about equality, utility implies individual inequality, and legal certainty seeks to achieve both justice and utility. This presents a challenge for officials involved in non-court dispute resolution processes. Their role is not to ensure legal certainty but to provide guidance on how to approach problems while considering administrative constraints. The understanding and application of RG by these officials will be further explained in this analysis.

3.2. Legitimacy Concept of State Official in Determining Restorative Justice

The use of authority as a tool of power has resulted in a negative impact on the development of the world. In his book "Atlantic Pirates in The Golden Age," Marcus Rediker notes that on July 12, 1726, William Fly was hanged for piracy in Boston. [39] Despite facing punishment, Fly believed that the rebellion he engaged in through piracy was justified. Interestingly, he even assisted the executioner in preparing the rope that ended his life. Piracy arose due to the absence of a fair system. The dominance of feudal leaders led to various issues, including conflicts at sea, mistreatment of sailors, and competition between nations, with no legal means to address these problems. [40,41] The establishment of a legal state (rechtstaat) was a response to the unchecked power of

[38] Kusnu Goesniadhie, S. (2010). Perspektif Moral Penegakan Hukum Yang Baik. *Jurnal Hukum Ius Quia Iustum*, *17*(2), h.212.

[39] According to Rediker, Fly symbolized all pirates of his time, as he was the first pirate to fly the Jolly Roger. Fly believed that pirates were not good people and that they committed crimes. However, he believed that they did so "in the name of a different social order.

[40] There is a rich history of admiralty or maritime law that dates back to at least 150 AD in Rhodes, a Greek island. This body of law governs ships and shipping. Today, individual seafaring nations establish their own maritime laws to regulate ships originating from their country. However, there is a global effort to create consistent laws, spearheaded by organizations such as the Comité Maritime International, which boasts thirty member countries.

[41] Birnie, P. W. (1987). *Piracy: Past, present and future*. *Marine Policy*, *11*(3), 163-183 dan Blouet, B. W. (2004). *The imperial vision of Halford Mackinder*. *Geographical Journal*, *170*(4), h. 322-329 The International Maritime Committee is an organization established to over see and regulate shipping activities.

country leaders and served as the opposite of machtsaat.[42,43] In this context, the use of discretion presents two situations: appropriate use in line with the law to ensure legal certainty, benefit, and justice for all parties, and inappropriate use that undermines justice, benefit, and legal certainty. This serves as an important reference for officials in using discretionary authority.[44]

"Discretion" is defined in Article 1, number 9 of Law 30/14 as an action taken by an authorized official to prevent government stagnation within the scope of government administration regulations. Therefore, the use of discretion must adhere to the principles of governance, including the principle of legality, protection of human rights, and the General Principles of Good Governance ("AUPB").[45]

The concept of using discretion in line with the government administration's spirit is further explained in Chapter IV on Discretion, Articles 23 to 32 of Law 30/14. This provision regulates the purpose of using discretion (Article 23 paragraphs 1 and 2 of Law 30/14), the scope of its use (Article 23 letters a to d of Law 30/14), its requirements (Article 24 letters a to f of Law 30/14), the preconditions for its use (Article 25, paragraphs 1 to 5 of Law 30/14), the procedure for use (Article 26 to Article 29 of Law 30/14), and the legal consequences of using discretion (Article 30 to Article 32 of Law 30/14). This means that even though government officials are delegated the authority to create a regulation with the intention of ensuring legal certainty over the legal vacuum of the 'collision of norms' that occurs, they must comply with specified limitations, which are stated in Article 6, paragraph 2, letter e of Law 30/14 as the purpose of its use.[46]

Wayne R. La Favre explains that discretion is positioned at the intersection of law and morality.[47] This aligns with Roscoe Pound's legal perspective on discretion, which encompasses both legal and moral aspects.[48] Discretion, despite being susceptible to interpretation, is deemed essential as it serves as a supplementary tool for government agencies to fulfill their functions. This includes carrying out both ordinary and legal actions aimed at realizing the instrumental, normative, and guarantee functions of government administration.[49]

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[42] Mulya, R. (2014). *Feodalisme dan Imperialisme di Era Global*. Jakarta. Elex Media Komputindo. h. 32.

[43] Manubulu, I. B., Kana, C. S., & Agustina, S. (2024). Political Concepts Expressed Through The Natural Semantic Metalanguage Approach. *Jurnal Hukum dan HAM Wara Sains*, *3*(01), 102-112. Doi. https://doi.org/10.58812/jhhws.v3i01.952.

[44] Lihat Pasal 4 ayat (2) UU 30/14.

[45] Compare this with Article 6(2) letter e of Law 30/14 which stipulates that the use of discretion must be by its purpose.

[46] Underline.

[47] Said, A. *Assessment Benchmark …Op.cit*, h. 155.

[48] Suteja, M. (2013). Pengawasan Terhadap Penyalahgunaan Wewenang Polri Mengadakan Tindakan Lain Menurut Hukum Yang Bertanggung Jawab (Diskresi). *Jurnal Magister Hukum Udayana (Udayana Master Law Journal)*, *2*(2), Article 2. https://doi.org/10.24843/JMHU.2013.v02.i02.p10, h. 6.

[49] Compare this concept with the theory of equivalence by Von Buri, which is better known as the adagium "conditio sine qua non," where the elimination of one element in an instrument that has an impact on the emergence of a risk must be considered as the cause of the elimination of the element. See Lienarto, L., *Penerapan Asas Conditio…Op.cit,*h. 32. This principle is closely related to the concept of post hoc ergo propter hoc in Pinto, R. C. Post Hoc.,…*Op.cit,* h. 57.

Regarding the implementation of government administration reflecting normative functions, Article 16(1)(l) of Law 2/02 allows police officials to "carry out other actions," forming the basis for exercising their discretion. [50,51] Additionally, Article 18(1) of Law 2/02 mandates that police can act based on their own assessment using the 'plichtmatigheids beginsel' principle. Based on the material content, a police officer can take a policy approach to resolve problems. As of 2021, Article 3(1) of PERKAP 8/21 outlines 2 qualifications for RG requirements: general and specific requirements. *Firstly*, General requirements are oriented towards the impact of RG on the wider community, *secondly*, formal requirements include elements necessary for a peace agreement between parties to the law. [52] Specific requirements include addressing criminal acts such as Information and Electronic Transactions, Drugs, and Traffic as outlined in Article 7 of PERKAP 8/21.

In addition, according to Article 1 of PERJA 15/20, there has been a shift in the principle of punishment. The focus is no longer on imposing punishment in line with retributive justice, but rather on promoting the use of restorative justice for the benefit of all parties involved. The main difference between these two concepts is that the Prosecutor has the authority to dismiss a case in the public interest. [53] This is further reinforced in Article 3, paragraph (1) of PERJA 15/20, which outlines circumstances such as the death of the suspect, expiration of the prosecution period, a prior decision on the same case (nebis in idem), withdrawal of the complaint, or reaching a settlement outside the court (afdoening buiten process). Furthermore, the legislation specifies the form of voluntary compensation, aiming to achieve peace between the parties and eliminate any potential for further conflict.

The RG system aims to replace the traditional retributive justice with a more positive approach. This system aims to reduce the stigma attached to perpetrators, promote social harmony, and offer various benefits as outlined in Article 4, paragraph (1) of PERJA 15/20. It's important to note that not all criminal acts can be resolved using the RG approach. This approach is suitable for criminal acts with a maximum sentence of 5 years, committed by non-recidivist suspects, and not resulting in losses exceeding Rp. 2,500,000.00.[54]

The normative function is equivalent to realizing the instrumental function of using discretion in government administration. The instrumental function of RG is identified when both parties agree that a peace agreement is formulated based on the results of the agreement, providing legal certainty for the problems they face. [55] The document is a

[50] The use of discretion by police officials is generally regulated in Article 16(2) of Law 2/02.

[51] James Q. Wilson explains four circumstances that allow discretion to be implemented, including law enforcement invoked by the police and citizens, as well as order maintenance invoked by the police and citizens. See Chryshnanda. (2002). Diskresi dan Korupsi dalam Pelaksanaan Oprasional Polri. *Jurnal Polisi Indonesia*, *4*(2), h.95.

[52] Article 5 huruf a s/d f, Pasal 6 (1) s/d 5 PERKAP 8/21.

[53] Article 35 huruf c UU 16/04.

[54] See Article 5, paragraph (1) of PERJA 15/20. Also, read Kristyanto's article which explains that the termination of prosecution is the authority of the Attorney General. Functions of the Prosecutor's Office by Kristyanto, G. H. *Op.cit,* h. 473.

[55] The term "Peace Agreement" does not universally describe a situation where both parties have reached an agreement. It specifically refers to Article 27, paragraph (1) of the Regulation of the Supreme Court of the Republic of Indonesia No. 1 of 2016 concerning Mediation Procedures in Court, and Attachment I-09 of the Decree of the Chief Justice of the Supreme Court of the

statement of belief 'willsforming'[56] from the parties in the RG case, which is binding like a 'final and binding' decision since it was agreed upon and has an 'executory forward' nature. This concept of certainty is mentioned by Suyatna as an implementation of the principle of legal certainty (etat de droit) carried out by government officials as facilitators of the decision-making process. [57]

When comparing the authority of the two institutions, it is clear that they have different perspectives on the implementation of RG. State officials, within the scope of POLRI's work, focus more on procedural actions to create order in the process of implementing RG, while the Prosecutor's Office tends to emphasize RG as a new approach to realizing the three fields. In fact, the idea of RG is a new dynamic in problem-solving that has only gained popularity in Indonesia since the 20th century.

RG was born as a response to the principle of ultimum remidium also known as the term 'het laastste redmiddel' in the criminal justice system introduced by Moddeman around 1870-1885. [58] RG is achieved through a peace dialogue between the parties facilitated by a Mediator[59] to help the parties reach a compromise with the limitations that have been determined in the applicable laws and regulations. The limitations on the discretion of state officials then become elements of the propriety of 'behoorlijkheid' of the implementation of RG which includes the principle of honesty 'het beginsel van fair play', the principle of accuracy/precision/consistency 'zorgvuldigheid', the principle of purity of purpose/sincerity of intent 'zuiverheid van oogmerk', the principle of balance 'evenwichtigheid' and the principle of legal certainty 'rechstzekerheid'

After careful analysis, it can be concluded that the authority of a state official concerning RG is determined by its conformity with the relevant provisions. The exercise of this authority must be free from legal deficiencies, and attention should be paid to the form and applicable procedural requirements.

4. Conclusion

The analysis suggests that the open concept of RG provides an opportunity for state officials to implement policies to achieve an objectives purpose of RG, demonstrating the relationship between RG and the authority of state officials. State officials use rechtshandelingen to address empty norms through *rechtsvinding* and *rechtsschepping*, also known as discretionary authority. However, this discretionary authority is constrained by general provisions in Law 30/14, and institution-specific regulations such as PERKAP 8/21 for police officials, PERJARI 15/20 for prosecutor's office officials, and PERMA 1/2016 for judges and mediators. To ensure legal certainty in the RG process, a national guideline is required for the position of RG as an open concept.

Republic of Indonesia Number 108/KMA/SK/VI/2016 concerning Mediation Governance in Court.

[56] Manubulu, I. B., Tona, H. I., & Bui, Y. A. (2023). Pergeseran Nilai Pada Tradisi Kumpul Keluarga dalam Kehidupan Masyarakat di Pulau Timor. *Journal of Education Sciences: Fondation & Application*, *2*(2), Article 2. https://doi.org/10.161985/jesfa.v2i2.61, h. 11. The parties have a reciprocal relationship based on gift-giving.

[57] Op.cit, Manubulu, I.B.,*et.al,* h.30.

[58] *Loc.cit,* Antony Moddeman.

[59] Mulyana, D. *Peningkatan Status Hukum…Op.cit,* h.13.

Additionally, oversight of RG performance within each institution is necessary, despite each institution having the authority to interpret RG within their own domain.

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